

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,

Defendant.

Case No. 1:19-cr-227
(LJV)

March 21, 2024

TRANSCRIPT EXCERPT - EXAMINATION OF DAVID CARPENTER
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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And

UNITED STATES DEPARTMENT OF JUSTICE

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* * * * *

(Excerpt commenced at 1:38 p.m.)

THE COURT: Welcome back, everyone. The record will reflect that all our jurors are present.

The government can call its next witness.

MR. DICKSON: Thank you, Judge. The government calls David Carpenter.

D A V I D C A R P E N T E R, having been duly called and sworn, testified as follows:

MR. DICKSON: May I proceed?

THE COURT: You may.

DIRECT EXAMINATION BY MR. DICKSON:

Q. Good afternoon, sir.

A. Good afternoon.

Q. Can you introduce yourself to the jury please?

A. Hi, my name is David Carpenter.

01:39PM 1 Q. Where do you work, Mr. Carpenter?

01:39PM 2 A. I currently work for the Treasury Inspector General For
01:39PM 3 Tax Administration, known as TIGTA. I'm a special agent.

01:40PM 4 Q. How long have you worked for TIGTA?

01:40PM 5 A. Three and a half years.

01:40PM 6 Q. What do you do there?

01:40PM 7 A. I'm a special agent there. We investigate allegations of
01:40PM 8 fraud, waste, abuse, committed against the IRS, to include
01:40PM 9 theft of IRS funds, threats of harms against IRS employees,
01:40PM 10 and threats of harm against taxpayers in accordance with
01:40PM 11 trying to get IRS funds.

01:40PM 12 Q. Prior to working at TIGTA, where did you work?

01:40PM 13 A. I was a special agent with the Department of Justice
01:40PM 14 Office of Inspector General's office.

01:40PM 15 Q. Feel free to move that mic a little closer to you if you
01:40PM 16 need to. How long were you with DOJ OIG?

01:40PM 17 A. Little bit more than two years.

01:40PM 18 Q. From when to when?

01:40PM 19 A. Late May of 2018 to September of 2020.

01:40PM 20 Q. What did you do there?

01:40PM 21 A. I was a special agent there charged with investigating
01:40PM 22 allegations of fraud, waste, and abuse, both criminal and
01:41PM 23 administrative, of employees of the Department of Justice.

01:41PM 24 Q. Was DOJ OIG empowered to conduct investigations of
01:41PM 25 employees of the DEA?

01:41PM 1 A. Yes.

01:41PM 2 Q. And then prior to the Office of Inspector General, where
01:41PM 3 did you work?

01:41PM 4 A. I was a special agent with the United States Secret
01:41PM 5 Service for eight and a half years from January of 2010 till
01:41PM 6 May of 2018.

01:41PM 7 Q. I want to focus on one particular investigation that you
01:41PM 8 did while you were with -- while you were with the Department
01:41PM 9 of Justice Office of Inspector General. Did you investigate
01:41PM 10 somebody named Joseph Bongiovanni?

01:41PM 11 A. I did.

01:41PM 12 Q. Did you meet Joseph Bongiovanni?

01:41PM 13 A. I did.

01:41PM 14 Q. Do you see him in court today?

01:41PM 15 A. I do.

01:41PM 16 Q. Can you point to where he's sitting, and tell us
01:41PM 17 something he's wearing, please?

01:41PM 18 A. He's wearing a red and blue tie.

01:41PM 19 **MR. DICKSON:** The record will reflect the witness
01:41PM 20 identified the defendant?

01:41PM 21 **THE COURT:** It does.

01:41PM 22 **BY MR. DICKSON:**

01:41PM 23 Q. Did this investigation start, Mr. Carpenter, in around
01:42PM 24 August of 2018 for you?

01:42PM 25 A. Yes.

01:42PM 1 Q. Now at the time you started investigating the defendant,
01:42PM 2 what was his job?

01:42PM 3 A. At the time, he was a special agent with the Drug
01:42PM 4 Enforcement Administration.

01:42PM 5 Q. Were you the only agent investigating the defendant at
01:42PM 6 that time, or were there other agencies involved?

01:42PM 7 A. Other agencies were involved.

01:42PM 8 Q. What other agencies?

01:42PM 9 A. HSI was involved. I was working with Special Agent
01:42PM 10 Curtis Ryan.

01:42PM 11 Q. Eventually later on did the FBI get involved, too?

01:42PM 12 A. Yes.

01:42PM 13 Q. Now, was anybody from the DEA a part of the investigative
01:42PM 14 team investigating the defendant?

01:42PM 15 A. No.

01:42PM 16 Q. Were DEA personnel viewed as subjects of the
01:42PM 17 investigation, some of them?

01:42PM 18 A. Some DEA employees were viewed -- subjects? I'm sorry,
01:42PM 19 can you --

01:42PM 20 Q. Did you deliver a subject letter to somebody named Joseph
01:43PM 21 Palmieri?

01:43PM 22 A. I did, yes.

01:43PM 23 Q. What's a subject letter?

01:43PM 24 A. A subject letter is notifying an individual that they are
01:43PM 25 a subject of a criminal investigation.

01:43PM 1 Q. What's a subject of a criminal investigation?

01:43PM 2 A. A person of interest that is -- we're investigating to --
01:43PM 3 pursuant to the belief that they have committed a federal
01:43PM 4 crime.

01:43PM 5 Q. Now were there different categories of allegations that
01:43PM 6 the investigative team was looking into in investigating the
01:43PM 7 defendant?

01:43PM 8 A. Yes.

01:43PM 9 Q. Was one of those categories the defendant's relationship
01:43PM 10 with Peter Gerace?

01:43PM 11 A. Yes.

01:43PM 12 Q. Was another category racial comments that he made to
01:43PM 13 Anthony Casullo?

01:43PM 14 A. Yes.

01:43PM 15 Q. Was another category related to allegations that Ron
01:43PM 16 Serio made about the defendant?

01:43PM 17 A. Yes.

01:43PM 18 Q. Now, you said you started, or you became involved in the
01:43PM 19 investigation in August of 2018. Were you still involved in
01:43PM 20 the investigation in March of 2019?

01:43PM 21 A. Yes.

01:43PM 22 Q. All right. I want to talk about that time frame. What
01:43PM 23 was the status of the investigation as of March 2019?

01:44PM 24 A. The investigation was ongoing and active. We were still
01:44PM 25 pursuing allegations furthering allegations of racial

01:44PM 1 language that was used in the DEA office, as well as

01:44PM 2 allegations him providing inform -- Mr. Bongiovanni providing

01:44PM 3 information to targets of investigations.

01:44PM 4 Q. And that was the whole investigative team looking into

01:44PM 5 that, right?

01:44PM 6 A. Correct.

01:44PM 7 Q. Were you still investigating the defendant's relationship

01:44PM 8 with Peter Gerace?

01:44PM 9 A. Yes.

01:44PM 10 Q. Now, prior to March of 2019, had you spoken to the

01:44PM 11 defendant?

01:44PM 12 A. No.

01:44PM 13 Q. In an investigation into allegations of wrongdoing, is it

01:44PM 14 valuable in an investigation to talk to the person accused of

01:44PM 15 wrongdoing?

01:44PM 16 A. Yes.

01:44PM 17 Q. Why is that valuable?

01:44PM 18 A. It allows the individual the opportunity to explain their

01:44PM 19 side of the story. It allows them to be heard. It allows

01:44PM 20 them to explain the situation as they saw it. It allows them

01:45PM 21 to bring information to us that may be new to us that may

01:45PM 22 further the investigation, point the investigation in a

01:45PM 23 different direction, or may provide information to ultimately

01:45PM 24 ending the investigation.

01:45PM 25 Q. Is it important for the person being interviewed to tell

01:45PM 1 the truth?

01:45PM 2 A. Yes.

01:45PM 3 Q. Why is that important to your investigation?

01:45PM 4 A. Truth telling to the investigation is very important

01:45PM 5 because it allows us to further spend time digging into leads

01:45PM 6 that they may have provided us, may allow us to interview new

01:45PM 7 witnesses, allows us to corroborate evidence that we already

01:45PM 8 have, it allows us to maybe produce new leads as well.

01:45PM 9 Q. In your experience, Mr. Carpenter, can you learn things
01:45PM 10 by interviewing a target of an investigation that you can't
01:45PM 11 learn from anybody else?

01:45PM 12 A. Yes.

01:45PM 13 Q. Like what?

01:45PM 14 A. We can learn specifically information that only they
01:45PM 15 would know, specific details of events, locations, hear
01:46PM 16 things directly from them that only people involved in it
01:46PM 17 intimately would know.

01:46PM 18 Q. So in the course of this investigation, did you want to
01:46PM 19 interview the defendant?

01:46PM 20 A. Yes.

01:46PM 21 Q. Did you ask the defendant whether he was willing to sit
01:46PM 22 down for an interview?

01:46PM 23 A. Yes.

01:46PM 24 Q. What did he say?

01:46PM 25 A. He agreed to.

01:46PM 1 Q. So, let's talk about the interview, did the interview of
01:46PM 2 the defendant eventually take place?

01:46PM 3 A. It did.

01:46PM 4 Q. When?

01:46PM 5 A. March 29th of 2019.

01:46PM 6 Q. Mr. Carpenter, going into this interview, did you have a
01:46PM 7 specific plan for what topics you were going to cover during
01:46PM 8 that interview?

01:46PM 9 A. Yes.

01:46PM 10 Q. What topic specifically were you going to cover?

01:46PM 11 A. The topics that we wanted to cover or I wanted to cover
01:46PM 12 are the allegations of him using racial words, as well as his
01:46PM 13 relationship with Peter Gerace.

01:46PM 14 Q. Now, just a moment ago you told us that those were two
01:46PM 15 categories of investigation that the team was looking at in
01:46PM 16 terms of what the defendant was being investigated for. But
01:47PM 17 you also said that the team was looking at allegations that
01:47PM 18 Ron Serio made.

01:47PM 19 Did the -- did you have a plan about whether to cover the
01:47PM 20 allegations that Ron Serio made in that March interview?

01:47PM 21 A. There was -- the discussion of the racial allegations and
01:47PM 22 his relationship with Peter Gerace were the only topics that
01:47PM 23 I was interested in talking about. It was -- discussing Ron
01:47PM 24 Serio was not an area of topic that I wanted to bring up or
01:47PM 25 discuss with him.

01:47PM 1 Q. Why?

01:47PM 2 A. At that point, we were focused -- I was only focused on
01:47PM 3 those relationships with Peter Gerace and the racial
01:47PM 4 allegations. It was determined that talking about Ron Serio
01:47PM 5 at that time would have -- wouldn't be appropriate based on
01:47PM 6 where the investigation was.

01:47PM 7 Q. So other agents on the team were still investigating
01:47PM 8 those allegations, you just didn't want to talk to the
01:47PM 9 defendant about those in this particular interview?

01:47PM 10 A. Correct.

01:47PM 11 Q. Was the goal of this interview to gather information from
01:48PM 12 the defendant?

01:48PM 13 A. Yes.

01:48PM 14 Q. You said the interview took place on March 29th of 2019.
01:48PM 15 Where did it happen?

01:48PM 16 A. The U.S. Attorney's Office`in Buffalo, New York.

01:48PM 17 Q. Who was there?

01:48PM 18 A. It was myself, another Department of Justice Office of
01:48PM 19 Inspector General Special Agent David Fusco, and
01:48PM 20 Mr. Bongiovanni.

01:48PM 21 Q. Was Mr. Bongiovanni under arrest during this interview?

01:48PM 22 A. No.

01:48PM 23 Q. Did he come in of his own free will?

01:48PM 24 A. Yes.

01:48PM 25 Q. Wasn't in handcuffs, was he?

01:48PM 1 A. Yes, this was a totally voluntary interview. When I was
01:48PM 2 setting up the interview I explained to him it was voluntary,
01:48PM 3 that he was free to come in, he didn't have to come in, that
01:48PM 4 there was no penalties against him for declining.
01:48PM 5 Q. And what did the defendant say when you told him that
01:48PM 6 those were his rights?
01:48PM 7 A. When he came in to meet with me, I reiterated his rights
01:48PM 8 to -- that this was a voluntary interview.
01:48PM 9 He said he was a law enforcement veteran of over 20 years
01:48PM 10 and he knew his rights.
01:49PM 11 Q. Now, Mr. Carpenter, did you record this interview with
01:49PM 12 the defendant?
01:49PM 13 A. We did not record the interview, no.
01:49PM 14 Q. Why not?
01:49PM 15 A. I felt that taking -- I felt that recording the interview
01:49PM 16 wasn't necessary, that it might have hindered his ability to
01:49PM 17 speak freely. So I decided to take notes as -- during the
01:49PM 18 meeting as it was occurring.
01:49PM 19 Q. And is that a normal thing to do, to record an interview
01:49PM 20 by taking notes as opposed to having a recording device?
01:49PM 21 A. Yes.
01:49PM 22 Q. Something that you did all the time as a special agent --
01:49PM 23 A. Yes.
01:49PM 24 Q. -- with OIG?
01:49PM 25 Now, at the beginning of the interview, did you tell the

01:49PM 1 defendant what the interview was about?

01:49PM 2 A. Yes.

01:49PM 3 Q. What did you tell him?

01:49PM 4 A. I explained to him the topics of the interview I wanted

01:49PM 5 to discuss with him involved allegations of him using racial

01:49PM 6 words in the presence of Anthony Tony Casullo, and his

01:49PM 7 relationship with Peter Gerace.

01:49PM 8 Q. Why did you tell him the topics at the beginning?

01:49PM 9 A. I felt that it was important to let him know up front why

01:50PM 10 he was there, let him know what we were going to discuss as a

01:50PM 11 way of building trust and rapport with him.

01:50PM 12 Q. And when that interview started, did you tell him that

01:50PM 13 you were investigating Ron Serio?

01:50PM 14 A. No.

01:50PM 15 Q. Now, before you started asking about those topics that

01:50PM 16 you mentioned, did you ask the defendant about his

01:50PM 17 background?

01:50PM 18 A. Yes.

01:50PM 19 Q. What did he say?

01:50PM 20 A. I asked him about his professional background. He stated

01:50PM 21 that he started his law enforcement career in the mid '90s as

01:50PM 22 an Erie County Sheriff New York deputy.

01:50PM 23 After three years, he was hired by the DEA where, after

01:50PM 24 completing the academy at the DEA he was stationed in

01:50PM 25 Orlando, Florida for about three years. And then after three

1 years, he transferred back to Buffalo, New York, where he was
2 from, and finished his entire career back here in Buffalo.

3 Q. Now you said just a minute ago that one of the topics you
4 wanted to cover was the defendant's relationship with Peter
5 Gerace, so that's what I want to talk about with you now.

6 Why were you interested in asking the defendant about his
7 relationship with Peter Gerace?

8 A. Prior to leaving -- prior to his to his retirement from
9 the DEA, Mr. Bongiovanni wrote -- had written three memos to
10 his chain of command at the DEA explaining his relationship
11 with Peter Gerace, some text message exchanges that they had
12 had.

13 So because of that, I felt that he had -- he brought
14 forward the -- his relationship with Mr. Gerace, that it was
15 something that had value that we'd want to learn more about.

16 Q. And just to be clear, Mr. Carpenter, were only two of
17 those memos about the defendant's relationship with Peter
18 Gerace, two of the three?

19 A. Yes.

20 Q. And then the third one was about Anthony Casullo's
21 relationship with Peter Gerace?

22 A. That's correct.

23 Q. Okay. Was understanding the defendant's relationship to
24 Peter Gerace important to the investigation?

25 A. Yes.

01:51PM 1 Q. Why?

01:51PM 2 A. As the larger investigation was unfolding, we became

01:51PM 3 aware of Mr. Bongiovanni's relationship with Peter Gerace,

01:52PM 4 and the coordination of efforts between Mr. Bongiovanni and

01:52PM 5 Gerace and wanted to learn more about their relationship.

01:52PM 6 Q. Was understanding the types of contact that the defendant

01:52PM 7 had with Peter Gerace important to the investigation?

01:52PM 8 A. Yes.

01:52PM 9 Q. Why?

01:52PM 10 A. We wanted to develop and learn if they spoke in person,

01:52PM 11 over the phone, via text message, as a way of gaining

01:52PM 12 evidence, possible witnesses to discussions, furthering our

01:52PM 13 investigation.

01:52PM 14 Q. And was understanding specific conversations that the

01:52PM 15 defendant and Peter Gerace had important to the

01:52PM 16 investigation?

01:52PM 17 A. Yes.

01:52PM 18 Q. Why?

01:52PM 19 A. Some discussions regarded -- regarded specific activities

01:52PM 20 from activities that we believed occurred, that we believed

01:52PM 21 his relationship with him, his relationship with Mr. Gerace,

01:52PM 22 while some conversations Mr. Gerace would be irrelevant to

01:52PM 23 that conversation but the building of a friendship and their

01:52PM 24 relationship history was important.

01:52PM 25 Q. Now, during your discussion with the defendant about his

1 relationship with Peter Gerace, did the defendant say
2 anything about keeping Peter Gerace at arms length?

3 A. Yes.

4 Q. What did he say?

5 A. He stated that Mr. Gerace was not in his close circle of
6 friends, and that he tried to keep him at arms length
7 especially after his arrest.

8 Q. What did you understand the defendant to mean when he
9 said he wanted to keep Peter Gerace at arms length?

10 A. I understood that to mean that that was somebody that he
11 socialized with, but not on -- but was not part of his inner
12 circle.

13 Q. Did you document in your notes that the defendant said he
14 wanted to keep Peter Gerace at arms length?

15 A. Yes.

16 Q. I'm going to show you Government Exhibit 310D, which is
17 already in evidence.

18 **MR. DICKSON:** If we can do that, Ms. Champoux,
19 please. And if we can go to page 12. And then blow up just
20 the -- yeah, that text message is fine.

21 **BY MR. DICKSON:**

22 Q. Mr. Carpenter, do you know whose phone number this is?

23 A. Yes.

24 Q. Whose is it?

25 A. That's the phone number that was assigned to

Mr. Bongiovanni while he was employed with the DEA.

Q. When the defendant told you he wanted to keep Peter

Gerace at arms length, did he tell you about this text

message where he says we are meeting at my house for drinks,

then to Boss or Scinta's if it don't rain at the festival.

Come over, Bro. Did he tell you about that message?

A. No.

MR. SINGER: Your Honor, can we approach real quick?

THE COURT: Sure.

(Sidebar discussion held on the record.)

MR. SINGER: So the issue is, is that these text messages never came into possession of Agent Carpenter at the time that he conducted this interview, they came into possession of investigators well after. So asking him questions about these text messages, whether he asked specific questions that are embodied in the texts is misleading to the jury.

THE COURT: I don't think that that was the question that was asked. He asked if Mr. Bongiovanni told him about this encounter.

MR. SINGER: And so, and so, again, the relevance of it would be if Mr. Carpenter asked Mr. Bongiovanni about any particular or specific meeting, and then Mr. Bongiovanni denied it, and then these things showed something else.

But the problem is, is that he didn't ask specific

1 questions about any of the things that are embodied in these
2 text messages.

3 **THE COURT:** But that's not what the question was.
4 The question was did Mr. Bongiovanni tell -- right?

5 **MR. DICKSON:** Yes, Judge.

6 **THE COURT:** The question is did he tell you about
7 this. So the relevance is, he says, he's not -- I'm gonna
8 keep him at arms length, but he's inviting him over to his
9 house during the Italian Festival. That's the argument.

10 Now, in cross, you can get up and say you didn't even
11 have these text messages until afterwards, right? So you
12 didn't even know anything about this. So you can cross on
13 that.

14 But the government can try its case the way the
15 government wants to try its case. And I don't think that
16 there's a relevance objection, because I think what the text
17 message has some -- is some indicia of proof that what
18 Mr. Bongiovanni said to him is not true.

19 **MR. SINGER:** I stand by the misleading objection
20 then. It sounds like it's going to get overruled, so --

21 **THE COURT:** Well, how is it misleading?

22 **MR. SINGER:** Because, again, I go back to the
23 original point of it's casting the impression that
24 Mr. Carpenter asked specific questions about these events that
25 are documented in a text.

01:58PM 1 message to Mr. Gerace?

01:58PM 2 A. He did not.

01:58PM 3 **MR. DICKSON:** Take that down Ms. Champoux, please,
01:58PM 4 thank you.

01:58PM 5 **BY MR. DICKSON:**

01:58PM 6 Q. Mr. Carpenter, can you tell the jury how the defendant
01:58PM 7 went on to describe his relationship with Mr. Gerace?

01:58PM 8 A. He stated his relationship with Mr. Gerace, that
01:58PM 9 Mr. Gerace was not part of his inner circle of friends. He
01:58PM 10 stated that the -- he started off -- his history with the
01:58PM 11 Gerace family started a long time ago. He stated that
01:58PM 12 growing up, the Bongiovanni family and the Gerace family were
01:58PM 13 longtime family friends, that they grew up together. That in
01:58PM 14 their early teens, late teens, early 20s, Mr. Bongiovanni
01:58PM 15 taught Mr. Gerace how to bar tend. That after he went to --
01:58PM 16 Mr. Bongiovanni went to Florida for the DEA, they fell out of
01:58PM 17 contact. When he came back, they reconnected. That he,
01:59PM 18 again, he did not consider him part of his friends. He did
01:59PM 19 not celebrate birthdays with him. Mr. Gerace was not invited
01:59PM 20 to weddings. He stated that he tried to keep him at arms
01:59PM 21 length. He stated that he went on to say that contact with
01:59PM 22 him, he tried to -- the contact with him was trying to keep
01:59PM 23 Mr. Gerace on a short leash in the hopes of using him to
01:59PM 24 secure information to further criminal investigations in his
01:59PM 25 role at the DEA.

1 Q. Did the defendant deny being close friends with Peter
2 Gerace?

3 A. Yes. He also --

4 Q. Go ahead.

5 A. He also denied initiated any contact with Mr. Gerace.

6 Q. We'll talk about that in just a second, Mr. Carpenter.

7 **MR. DICKSON:** But, Ms. Champoux, can you pull up
8 Government Exhibit 98 which is already in evidence. And if we
9 can scroll to page 3, please. Maybe the next one down. Thank
10 you. Is -- oh, I'm sorry. Ms. Champoux, can we go back up to
11 page 3? Right there is good. Okay.

12 **BY MR. DICKSON:**

13 Q. So, when the defendant told you this, what was the date
14 of the interview when he told you that he and Peter Gerace
15 weren't close friends?

16 A. March 29th of 2019.

17 Q. Do you see the date listed next to this text message
18 here?

19 A. I do.

20 Q. What's that date?

21 A. December 7th of 2018.

22 Q. Just a few months before your interview; is that right?

23 A. Correct.

24 Q. What does that text message say right there,
25 Mr. Carpenter?

02:00PM 1 A. Hey, Brother. I know we haven't talked in a while, but
02:00PM 2 you'll always be one of my best friends, and you know I
02:00PM 3 always have your back.

02:00PM 4 Q. When the defendant told you he and Peter Gerace weren't
02:00PM 5 close friends, did he tell you about this text message from
02:00PM 6 Peter Gerace?

02:00PM 7 A. No.

02:00PM 8 **MR. DICKSON:** Ms. Champoux, can we scroll down the
02:01PM 9 next page, please?

02:01PM 10 **BY MR. DICKSON:**

02:01PM 11 Q. When the defendant told you and Peter Gerace weren't
02:01PM 12 close friends, did he tell you how he responded there?

02:01PM 13 A. He did not.

02:01PM 14 Q. What does that say?

02:01PM 15 A. We have been friends for 25 years, bud, all good.

02:01PM 16 **MR. DICKSON:** And take that down, Ms. Champoux,
02:01PM 17 please, thank you.

02:01PM 18 **BY MR. DICKSON:**

02:01PM 19 Q. During the same part of this interview, Mr. Carpenter,
02:01PM 20 did the defendant describe a trip that he took to Las Vegas?

02:01PM 21 A. He did.

02:01PM 22 Q. What did he say about that?

02:01PM 23 A. He stated that he took a personal trip to Las Vegas, and
02:01PM 24 while out there he coincidentally ran into Peter Gerace.

02:01PM 25 Q. Did you continue asking the defendant questions about

02:01PM 1 Peter Gerace after he said he coincidentally ran into
02:01PM 2 Mr. Gerace in Las Vegas? Did the interview continue?
02:01PM 3 A. Yes, the interviewed.
02:01PM 4 Q. And did you ask the defendant about Mr. Gerace's use of
02:01PM 5 illegal drugs?
02:01PM 6 A. I did.
02:01PM 7 Q. Why did you ask him about that?
02:02PM 8 A. As an employee of the DEA, I wanted to know if he
02:02PM 9 associated with drug users, and to know if Peter Gerace was a
02:02PM 10 drug user that he was associating with.
02:02PM 11 Q. Was that important to the investigation?
02:02PM 12 A. It was.
02:02PM 13 Q. How so?
02:02PM 14 A. It was -- we have -- we had information of drug use by
02:02PM 15 Mr. Gerace.
02:02PM 16 Q. What did you ask the defendant about his knowledge of
02:02PM 17 whether Peter Gerace used illegal drugs?
02:02PM 18 A. I asked him if you've ever seen Peter Gerace use drugs.
02:02PM 19 Q. What did he say?
02:02PM 20 A. He denied seeing him use drugs.
02:02PM 21 Q. And when you say "he" --
02:02PM 22 A. Mr. Bongiovanni denied seeing Mr. Gerace use drugs.
02:02PM 23 Q. Was it important to the investigation that the defendant
02:02PM 24 denied seeing Peter Gerace ever use illegal drugs?
02:02PM 25 A. It was important to the investigation that

02:02PM 1 Mr. Bongiovanni answer truthfully.

02:02PM 2 Q. Did you eventually ask the defendant if he knew what

02:02PM 3 Peter Gerace did for a living?

02:02PM 4 A. I did.

02:02PM 5 Q. What did he say?

02:02PM 6 A. He said that Mr. Gerace was the owner of Pharaoh's

02:03PM 7 Gentlemen's Club.

02:03PM 8 Q. Did the defendant say anything about whether he tried to

02:03PM 9 work with Peter Gerace in furtherance of some DEA

02:03PM 10 investigation?

02:03PM 11 A. He said at one point in time Mr. Gerace came down to the

02:03PM 12 DEA to be a -- to see if he could be a source of information

02:03PM 13 in furtherance of an investigation. It was determined that

02:03PM 14 Mr. Gerace would be better suited to work for the Federal

02:03PM 15 Bureau of Investigation, and that he was referred to the FBI.

02:03PM 16 Q. Now you said he referred to Mr. Gerace coming down to the

02:03PM 17 DEA about whether he was going to a source of information?

02:03PM 18 A. Correct.

02:03PM 19 Q. Was it a source of information, or something else?

02:03PM 20 A. I -- I can't recall if it's a source or a cooperator, but

02:03PM 21 to work with the DEA.

02:03PM 22 Q. That's okay. You say you can't recall. So if I showed

02:03PM 23 you your report of the interview, would that help you

02:03PM 24 remember --

02:03PM 25 A. Yes.

02:03PM 1 Q. -- how the defendant referred to Mr. Gerace?

02:03PM 2 A. Yes.

02:04PM 3 Q. I'm going to show the Defense 3595BV on the second page
02:04PM 4 under the header Peter Gerace.

02:04PM 5 And so, Mr. Carpenter, what I'm going to do is I'm going
02:04PM 6 to hand you this document, I want you to read the piece under
02:04PM 7 Peter Gerace. And then before you say anything, just look
02:04PM 8 back up at me, and I'll ask you if it refreshed your memory,
02:04PM 9 okay?

02:04PM 10 A. Thank you.

02:04PM 11 Q. Did that help you refresh your memory?

02:04PM 12 A. Yes.

02:04PM 13 Q. When the defendant was talking to you about his meeting
02:04PM 14 with Peter Gerace at the DEA, tell the jury what he said.

02:05PM 15 A. He stated that Mr. Gerace came down to be a possible
02:05PM 16 informant for the DEA.

02:05PM 17 Q. And is an informant different than a source of
02:05PM 18 information in your experience?

02:05PM 19 A. Yes.

02:05PM 20 Q. Did you ask the defendant about whether Peter Gerace had
02:05PM 21 ever called him while somebody at Pharaoh's was overdosing?

02:05PM 22 A. I did.

02:05PM 23 Q. Why did you ask him that question?

02:05PM 24 A. We had information that Mr. Gerace had in fact called
02:05PM 25 Mr. Bongiovanni while somebody at Pharaoh's was overdosing,

02:05PM 1 and wanted to confirm whether or not that phone call

02:05PM 2 occurred.

02:05PM 3 Q. Was the defendant's answer to that question important to
02:05PM 4 your investigation?

02:05PM 5 A. Yes.

02:05PM 6 Q. What did the defendant say when you asked him whether
02:05PM 7 Peter Gerace had ever called him while somebody was
02:05PM 8 overdosing at Pharaoh's Gentlemen's Club?

02:05PM 9 A. He denied that phone call occurred.

02:05PM 10 Q. Now you mentioned a minute ago, Mr. Carpenter, that the
02:05PM 11 defendant said something about trying to keep Peter Gerace on
02:06PM 12 a short leash; is that right?

02:06PM 13 A. Yes.

02:06PM 14 Q. What did you understand the defendant to mean when he
02:06PM 15 said he was trying to keep Peter Gerace on a short leash?

02:06PM 16 A. He explained it to me as meaning that he wanted to
02:06PM 17 maintain a relationship with him to possibly gain information
02:06PM 18 regarding illegal activity to further criminal cases.

02:06PM 19 Q. Did the defendant tell you that he was trying to keep
02:06PM 20 Peter Gerace on a short leash before or after he told you he
02:06PM 21 was trying to keep Peter Gerace at arms length?

02:06PM 22 A. After.

02:06PM 23 Q. And, Mr. Carpenter, did you go on to ask the defendant
02:06PM 24 whether he ever initiated contact with Peter Gerace?

02:06PM 25 A. I did.

02:06PM 1 Q. Why did you ask the defendant if he had ever initiated
02:06PM 2 contact with Peter Gerace?

02:06PM 3 A. I wanted to understand their relationship dynamic.
02:06PM 4 Friends con -- in a friendship, it's been my experience that
02:06PM 5 both friends contact each other. That's a mutual give and
02:07PM 6 take.

02:07PM 7 I wanted to know if Mr. Bongiovanni contacted Mr. Gerace,
02:07PM 8 if he would initiate contact with -- if Mr. Gerace was
02:07PM 9 somebody he, Mr. Bongiovanni, would initiate contact with.

02:07PM 10 Q. So was it important to the investigation whether the
02:07PM 11 defendant had initiated contact with Mr. Gerace?

02:07PM 12 A. Yes.

02:07PM 13 Q. What did the defendant say when you asked him if he had
02:07PM 14 ever initiated contact with Peter Gerace?

02:07PM 15 A. He denied that.

02:07PM 16 **MR. DICKSON:** Ms. Champoux can we please pull up
02:07PM 17 Government Exhibit 310D already in evidence. Sorry,
02:07PM 18 Ms. Champoux, if we can go to page 4. I think is page 4,
02:07PM 19 right?

02:07PM 20 **BY MR. DICKSON:**

02:07PM 21 Q. Mr. Carpenter, can you see the date on the last text
02:07PM 22 message on page 4? What does that say? Do you see the date
02:07PM 23 there?

02:07PM 24 A. Yes.

02:07PM 25 Q. What's that day?

02:07PM 1 A. March 1st of 2015.

02:07PM 2 **MR. DICKSON:** Okay. We can take the zoom off, and
02:07PM 3 can we go scroll down just to the next page?

02:08PM 4 So on this -- the immediate next text message,
02:08PM 5 Mr. Champoux, if we can blow that up.

02:08PM 6 **BY MR. DICKSON:**

02:08PM 7 Q. What's the date of this text message?

02:08PM 8 A. March 10, 2015.

02:08PM 9 Q. Is this the first text message from March 10th, 2015?

02:08PM 10 A. Yes.

02:08PM 11 Q. Who is initiating contact by text message on March 10th,
02:08PM 12 2015?

02:08PM 13 A. Mr. Bongiovanni.

02:08PM 14 Q. And what does it say?

02:08PM 15 A. Peter, you and Katrina are invited Sunday, March 15th at
02:08PM 16 11 a.m., Saint Patrick's Day party at my house. About 40
02:08PM 17 people will be there. I hope you guys can make it.

02:08PM 18 **MR. DICKSON:** Take that off, Ms. Champoux, please.
02:08PM 19 Can we go to page 11 of the same document?

02:08PM 20 **BY MR. DICKSON:**

02:08PM 21 Q. Mr. Carpenter, do you see any text messages from
02:08PM 22 July 15th, 2015?

02:08PM 23 A. I do.

02:08PM 24 Q. Who is sending the first text message on July 15th, 2015
02:09PM 25 in this text thread?

02:09PM 1 A. Mr. Bongiovanni.

02:09PM 2 Q. And what does say?

02:09PM 3 A. Going up to Boss tonight. What day is your golf
02:09PM 4 tournament again?

02:09PM 5 **MR. DICKSON:** Can we go to page 28 of the same
02:09PM 6 exhibit, please?

02:09PM 7 **BY MR. DICKSON:**

02:09PM 8 Q. Mr. Carpenter, what's the date of the last text message
02:09PM 9 on page 28?

02:09PM 10 A. June 17th, 2016.

02:09PM 11 **MR. DICKSON:** And can we go to the immediate next
02:09PM 12 page, Ms. Champoux, page 29. And can we blow up the first
02:09PM 13 text message there?

02:09PM 14 **BY MR. DICKSON:**

02:09PM 15 Q. Mr. Carpenter, is this the first text message in this
02:09PM 16 text thread on June 18th, 2016?

02:09PM 17 A. It is.

02:09PM 18 Q. Who was initiating contact by text message on June 18,
02:09PM 19 2016?

02:10PM 20 A. Mr. Bongiovanni.

02:10PM 21 Q. What does it say?

02:10PM 22 A. Great time last night. It was great to see your parents.
02:10PM 23 Thanks again for the invitation.

02:10PM 24 **MR. DICKSON:** Can you take that down, please,
02:10PM 25 Ms. Champoux? Thank you.

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BY MR. DICKSON:

Q. Now Mr. Carpenter after that March 2019 interview with the defendant, did the investigation continue?

A. It did.

Q. Did the team continue investigating the allegations regarding Ron Serio?

A. Yes.

Q. Did the team continue investigating the defendant's relationship with Peter Gerace?

A. Yes.

Q. And did the investigation lead ultimately to a search warrant being executed at the defendant's house?

A. Yes.

Q. When was that?

A. June 6th of 2019.

Q. During the execution of that search warrant, did the defendant agree to be interviewed?

A. Yes.

Q. Who was leading the interview of the defendant on June 6th, 2019?

A. HSI Special Agent Curtis Ryan.

Q. Were you there, too?

A. I was.

Q. What was your role?

A. I was, what we refer to as second chair. I was -- my

responsibility was to listen to the investigation, help Agent Ryan stay on track, interject with any followup questions, make sure the material is being covered.

Q. Now the jury already heard from Special Agent Ryan, so I'm not going to go through all this again. There's just a few questions that I want to ask you about this interview.

During this interview, did Special Agent Ryan ask the defendant questions about somebody named Frank Parisi?

A. He did.

Q. Did the defendant answer those questions?

A. He did.

Q. During the conversation about Frank Parisi, did the defendant's wife interject herself into the conversation?

A. She did.

Q. Did you observe where the defendant looked when his wife interjected?

A. I did.

Q. Where did he look?

A. He looked directly towards her.

Q. What about Special Agent Ryan? Did you see where Special Agent Ryan looked when the defendant's wife interjected herself into the conversation?

A. Special Agent Ryan also looked towards her.

Q. Towards Mr. Bongiovanni's wife?

A. Correct.

1	Q. Where did you look?
---	------------------------

2 | A. I looked towards Mr. Bongiovanni.

3 Q. What did you see the defendant do when the

4 conversation -- when the defendant's wife interjected herself

5 | into this conversation about Frank Parisi?

6 A. During that part of the answer, she -- while she was

7 | answering, he was shaking his head in a left to right fashion

8 giving the universal no indication.

9 Q. Was he shaking his head side to side in the direction of
10 his wife while she was talking?

11 A. Yes, he was looking at her.

12 Q. Now at some point during this June 6, 2019 interview,

13 | Mr. Carpenter, was there a box of DEA file materials

14 discovered in the defendant's basement?

15	A. Yes.
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16 Q. I'm going to grab Government Exhibit 100.

17 I'm holding Government Exhibit 100A. Do you recall

18 Special Agent Ryan asking the defendant why he had a box and
19 a file of materials related to Ron Serio in his basement?

20	A. Yes.
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21 Q. Did Special Agent Ryan ask the defendant to explain why
22 he had these materials two separate times?

23	A. Yes.
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24 Q. The first time, what did the defendant say as his
25 explanation for why he had this Ron Serio file in his

02:14PM 1 basement?

02:14PM 2 A. The -- he provided an answer that he knew that HSI was
02:14PM 3 investigating Italian Organized Crime, and that the name Ron
02:14PM 4 Serio came up in that investigation, and he wanted to hold
02:14PM 5 onto his case file to make sure everything was on the up and
02:14PM 6 up in the event something in the future arose.

02:14PM 7 Q. Did the defendant explain how he knew there was an
02:14PM 8 Organized Crime investigation being conducted by HSI?

02:14PM 9 A. When asked about that, he said that I, David Carpenter,
02:14PM 10 mentioned that name during our March interview.

02:14PM 11 Q. And was that part of the defendant's second explanation
02:14PM 12 for why he had this file?

02:14PM 13 A. Yes.

02:14PM 14 Q. Did he tell you and Special Agent Ryan when he took this
02:14PM 15 file home?

02:14PM 16 A. Yes.

02:14PM 17 Q. When did he say he took the file home?

02:14PM 18 A. He stated he took that file home when he retired from the
02:14PM 19 DEA.

02:14PM 20 Q. When did he retire from the DEA?

02:14PM 21 A. His official retirement date was January 31st, 2019,
02:14PM 22 however the office was closed due to weather, so he turned in
02:15PM 23 all of his DEA gear on February 1st, was his last day -- last
02:15PM 24 day there.

02:15PM 25 Q. So when he tells you that he takes this file home with

02:15PM 1 him on February 1 of 2019, during that second time he was
02:15PM 2 explaining why he took it home, what did he say?

02:15PM 3 A. I'm sorry?

02:15PM 4 Q. During your June interview, you said there were two times
02:15PM 5 the defendant tried to explain why he had this file; is that
02:15PM 6 right?

02:15PM 7 A. Yes.

02:15PM 8 Q. During the second time he was explaining why he had the
02:15PM 9 file, what did he say?

02:15PM 10 A. He said that I brought the file name up during my March
02:15PM 11 interview with him.

02:15PM 12 Q. Mr. Carpenter, during your March 29, 2019 interview, did
02:15PM 13 you ever bring up the name Ron Serio?

02:15PM 14 A. No.

02:15PM 15 Q. Did you ever say you were investigating Ron Serio's
02:15PM 16 drug-trafficking organization?

02:15PM 17 A. No.

02:15PM 18 Q. Did you tell the defendant that you were investigating
02:16PM 19 Organized Crime?

02:16PM 20 A. No.

02:16PM 21 Q. There are some other names on the front of Government
02:16PM 22 Exhibit 100A. Did you tell the defendant during your March
02:16PM 23 interview that you were investigating Tom Serio?

02:16PM 24 A. No.

02:16PM 25 Q. What about David Oddo?

02:16PM 1 A. No.

02:16PM 2 Q. What about T.S.?

02:16PM 3 A. There were some names that I did mentioned to him during
02:16PM 4 my first interview with him, I can't recall all of them
02:16PM 5 offhand.

02:16PM 6 Q. But was Ron Serio one of those names?

02:16PM 7 A. No.

02:16PM 8 Q. And in June, is that what the defendant said --

02:16PM 9 A. Yes.

02:16PM 10 Q. -- that you said you were investigating Ron Serio?

02:16PM 11 A. Yes.

02:16PM 12 **MR. DICKSON:** Just a moment, please, Judge.

02:16PM 13 Judge, I don't have any more questions. Thank you.

02:16PM 14 **THE COURT:** Cross?

02:16PM 15

02:16PM 16 **CROSS-EXAMINATION BY MR. SINGER:**

02:17PM 17 Q. Hi, Mr. Carpenter.

02:17PM 18 A. Hi.

02:17PM 19 Q. So, I want to go through a couple of different things.

02:17PM 20 So, there was the topic of subject letters being served
02:17PM 21 on people in the DEA during the course of your investigation;
02:17PM 22 do you remember that coming up on direct?

02:17PM 23 A. Yes.

02:17PM 24 Q. And so you had mentioned one person you served a subject
02:17PM 25 letter to was a person by the name of Joseph Palmieri; is

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1 that right?

2 A. Yes, sir.

3 Q. But that wasn't the only subject letter you served on a

4 DEA agent, correct?

5 A. That's the only one I recall directly serving.

6 Q. There were other -- you may not have served them

7 directly, but there were other subject letters provided to

8 DEA Buffalo agents, correct?

9 A. I can't recall offhand, I'm sorry. As it relates to who

10 I served, that's the one I served.

11 Q. So one of the people that you investigated was a person

12 by the name of Special Agent Brian Chella; do you remember

13 that?

14 A. Yes.

15 Q. And Mr. Chella, you remember interviewing him, correct?

16 A. Yes.

17 Q. Was he someone you served a subject letter on?

18 A. I don't believe so?

19 Q. How about any other people, like Greg Yensan in the

20 office. Do you remember serving a subject letter on him?

21 A. I don't recall. I don't recall that.

22 Q. You just don't recall?

23 A. No.

24 Q. But you would agree with me that other subject letters

25 were served as the course -- during the course of your

02:18PM 1 investigation, correct?

02:18PM 2 A. The only one that I recall serving was on Joseph

02:18PM 3 Palmieri.

02:18PM 4 Q. Okay. That's the only one that you remember about?

02:18PM 5 A. Yes.

02:18PM 6 Q. Okay. So, when you met with Mr. Bongiovanni, you didn't

02:18PM 7 walk into the interview blind, correct?

02:18PM 8 A. I did not, no.

02:18PM 9 Q. You prepared before you went to the interview, correct?

02:18PM 10 A. I prepared, or he -- I'm sorry, what was the question?

02:18PM 11 Q. You prepared before you went to the interview --

02:18PM 12 A. Yes.

02:18PM 13 Q. -- in March of 2019, correct?

02:18PM 14 So you went through a number of different things, because

02:18PM 15 your investigation, you wanted to ask him about several

02:18PM 16 things that were potentially important pieces of information

02:19PM 17 for your investigation, right?

02:19PM 18 A. Correct.

02:19PM 19 Q. So, for instance, one of the things you looked at was

02:19PM 20 whether or not Mr. Bongiovanni's DEA cell phone may have

02:19PM 21 contained information relevant to your investigation,

02:19PM 22 correct?

02:19PM 23 A. On the initial interview in March?

02:19PM 24 Q. In the March interview, to prepare for that interview, is

02:19PM 25 one of the steps you took as part of your investigation to

02:19PM 1 look into whether his DEA cell phone was available for
02:19PM 2 analysis?

02:19PM 3 A. Yes.

02:19PM 4 Q. And you reached out on February 11th of 2019 to determine
02:19PM 5 whether or not his DEA cell phone was available at that time,
02:19PM 6 correct?

02:19PM 7 A. I do recall reaching out and asking, I don't recall the
02:19PM 8 date.

02:19PM 9 Q. But you may not recall the date, but it was after
02:19PM 10 Mr. Bongiovanni retired, correct?

02:19PM 11 A. Correct.

02:19PM 12 Q. And he was under investigation prior to retirement,
02:19PM 13 correct?

02:19PM 14 A. Correct.

02:19PM 15 Q. The DEA cell phone was not his personal cell phone,
02:19PM 16 correct?

02:19PM 17 A. He stated to me that he used --

02:19PM 18 Q. I'm not asking you what Mr. Bongiovanni stated. I'm
02:19PM 19 asking you whether or not the cell phone that Mr. Bongiovanni
02:20PM 20 used prior to his retirement was his cell phone or the DEA's
02:20PM 21 cell phone?

02:20PM 22 A. DEA.

02:20PM 23 Q. So that was their property --

02:20PM 24 A. Correct.

02:20PM 25 Q. -- correct? So your understanding is that it doesn't

02:20PM 1 require a search warrant to look through that phone, correct?

02:20PM 2 A. Correct.

02:20PM 3 Q. You could have just seized it, told him to turn it over,

02:20PM 4 and could have looked at it, correct?

02:20PM 5 A. Yes, correct.

02:20PM 6 Q. But you never took the investigative step to do that,

02:20PM 7 correct?

02:20PM 8 A. We did not.

02:20PM 9 Q. With regard to other steps you took, one of the things

02:20PM 10 you looked into was whether or not there were drug testing

02:20PM 11 results available for Mr. Bongiovanni, correct?

02:20PM 12 A. Correct.

02:20PM 13 Q. Because your understanding was that DEA randomly tests

02:20PM 14 agents throughout the year as to whether or not they test

02:20PM 15 positive for drugs, correct?

02:20PM 16 A. Correct.

02:20PM 17 Q. And your understanding was that DEA keeps records of

02:20PM 18 positive results, correct?

02:20PM 19 A. Correct.

02:20PM 20 Q. So when someone pops a positive for having a narcotic in

02:20PM 21 their system, right?

02:20PM 22 A. It's my understanding they keep records, yes.

02:20PM 23 Q. But when there are negative results, they do not retain

02:20PM 24 those records, correct?

02:21PM 25 A. I don't recall specifically what the DEA policy is on

retaining drug records.

Q. Okay. But you did do a search to determine whether or not Mr. Bongiovanni tested positive for any controlled substances, correct?

A. We asked for his test results, yes.

Q. And those test results, there were none that were found that indicated any positive --

MR. DICKSON: Objection, Judge. Relevance and 403. Can we approach if --

THE COURT: Sure, yeah, come on up.

(Sidebar discussion held on the record.)

THE COURT: Talk to me.

MR. DICKSON: Judge --

THE COURT: I think I understand where you're coming from.

MR. DICKSON: -- the 2nd Circuit in United States versus Scarpa said that certain days or instances of innocent activity during a conspiracy is not relevant to whether, on other occasions, the individual engaged in illegal conduct. So just because Mr. Bongiovanni didn't test positive at some points during his DEA career, really doesn't have any bearing on whether on other instances he used illegal substances. I mean, that's just what the 2nd Circuit said.

THE COURT: I understand that. But why wouldn't the absence of any positive drug test be relevant to this case?

02:22PM 1 You folks have been arguing through the whole trial that it's
02:22PM 2 a low bar, relevance is a low bar, relevance is a low bar.

02:22PM 3 **MR. TRIPI:** May I?

02:22PM 4 **MR. DICKSON:** Feel free.

02:22PM 5 **MR. TRIPI:** I'm sorry. There no evidence that he was
02:22PM 6 ever tested, so it assumes a fact not in evidence. Sorry.

02:22PM 7 **THE COURT:** Do you know whether he was tested?

02:22PM 8 **MR. SINGER:** We heard from Agent Kasprzyk I think
02:22PM 9 early on in the trial that there were DEA testing tests that
02:22PM 10 went on, that was something that was there.

02:22PM 11 We heard from Louie Selva, talked about how
02:22PM 12 Mr. Bongiovanni talked about being randomly tested.

02:22PM 13 So it's in evidence. And what I'm trying to
02:22PM 14 determine is whether or not they were able to capture any type
02:22PM 15 of positive results. And I think the testimony is going to be
02:22PM 16 that it's not. And it's relevant to whether or not he used
02:22PM 17 drugs, as the government's a proponent of, or whether he did
02:22PM 18 not use drugs as we are.

02:22PM 19 **MR. DICKSON:** And the 2nd Circuit has said that the
02:23PM 20 absence of criminal activity on certain days during a criminal
02:23PM 21 conspiracy is not relevant to whether the person did in fact
02:23PM 22 engage in criminal activity on other days.

02:23PM 23 **THE COURT:** But -- but -- it's not just an absence --
02:23PM 24 I'm thinking out loud, Ann, I'm sorry.

02:23PM 25 **MR. TRIPI:** While you're thinking, under Rule 104, by

02:23PM 1 way of further proffer, we have not been able to ascertain any
02:23PM 2 information that anyone in DEA Buffalo in the last -- has
02:23PM 3 actually been tested, because although that testimony didn't
02:23PM 4 come out, they certainly had Francis DiCarlo on the stand
02:23PM 5 early and chose not to ask those questions, he would have been
02:23PM 6 the person to have personal knowledge of whether or not there
02:24PM 7 was actual testing.

02:24PM 8 And what Special Agent DiCarlo at least informed me,
02:24PM 9 I didn't get into it because I didn't anticipate necessarily
02:24PM 10 these questions through this witness later on, as the now ASAC
02:24PM 11 as I understand it, they do the testing in New York City.

02:24PM 12 So to test someone in Buffalo, as he understands it,
02:24PM 13 he was gonna actually look into this, look into a policy
02:24PM 14 change after this trial. You would have to notify someone,
02:24PM 15 they do the testing in New York City, which is ridiculous.

02:24PM 16 So that dynamic makes it almost impossible to test
02:24PM 17 someone because they don't have a mechanism here.

02:24PM 18 **THE COURT:** So if you ask do you know of any positive
02:24PM 19 drug tests for Mr. Bongiovanni and he says no, I'm going to
02:24PM 20 let the government put this proof on that they don't have
02:24PM 21 testing equipment.

02:24PM 22 **MR. SINGER:** Well, first of all, what Mr. Tripi just
02:24PM 23 reported was information that Mr. DiCarlo communicated to them
02:24PM 24 as an associate SAC as he understands the policy in existence
02:25PM 25 at DEA for testing today, not as he understood it way back

1 when these testing results were occurring and they become
2 relevant.

3 So I don't think that the proffer the government's
4 offered here, Judge, is indicative of what was happening back
5 in the relevant time period.

6 **THE COURT:** We don't have any evidence that he was
7 ever tested.

8 **MR. SINGER:** Judge, I can present evidence that he's
9 tested. Of course, I don't have situations where I want to
10 put documents in the government's case in chief at this point
11 in time.

12 **THE COURT:** Do you have a good-faith basis he was
13 tested?

14 **MR. SINGER:** He was tested, Judge. Every single one
15 of these guys was tested. I think it is completely ridiculous
16 to say --

17 **MR. TRIPI:** I'm not saying he doesn't have a
18 good-faith basis, Judge, but I'm saying I am unaware of
19 testing.

20 **THE COURT:** Okay. I'm going to allow you to ask the
21 question as to whether he knows of any positive test results,
22 and then I'm going to allow the government either on redirect
23 to ask whether he knows whether he was ever tested. And if
24 Mr. Tripi has evidence that people just didn't get tested,
25 that can be put in.

02:27PM 1 Q. Okay. But you did look at T.S., and determine whether he
02:27PM 2 not he was a DEA confidential --

02:27PM 3 A. Correct.

02:27PM 4 Q. -- informant, correct?

02:27PM 5 And you discovered that he was a DEA confidential
02:27PM 6 informant at one point in time, correct?

02:27PM 7 A. I believe so yes.

02:27PM 8 Q. And the dates that he was a confidential informant were
02:27PM 9 from January 30th, 2009 until September of 2009, correct?

02:27PM 10 A. I can't recall specific dates.

02:27PM 11 Q. Let's see if we can refresh your recollection.

02:27PM 12 **MR. SINGER:** Ms. Champoux, for the witness only,
02:27PM 13 would you mind bringing up Government Exhibit 3595 BB, B as in
02:27PM 14 boy, B as in boy.

02:27PM 15 **BY MR. SINGER:**

02:27PM 16 Q. You can just take a look at that document, sir?

02:27PM 17 A. Okay.

02:28PM 18 **MR. SINGER:** Sorry, you can take that down,
02:28PM 19 Ms. Champoux.

02:28PM 20 **BY MR. SINGER:**

02:28PM 21 Q. So, as far as Mr. T.S. is concerned, did you ever have
02:28PM 22 any type of information that Mr. T.S. was signed up by Joseph
02:28PM 23 Bongiovanni as a DEA C.I.?

02:28PM 24 A. I don't recall anything specific about him signing him
02:28PM 25 up.

02:28PM 1 Q. You don't recall -- sorry, go ahead. Sorry to cut you
02:28PM 2 off.

02:28PM 3 A. I don't recall much information on Mr. T.S.

02:28PM 4 Q. And you don't remember Mr. Bongiovanni being a handling
02:28PM 5 agent for Mr. T.S. when he was a C.I. for Buffalo, correct?

02:28PM 6 A. I don't recall that, no.

02:28PM 7 Q. You don't recall Mr. T.S. being signed up with
02:28PM 8 Mr. Bongiovanni for the purpose of investigating Ron Serio,
02:28PM 9 correct?

02:28PM 10 A. I don't.

02:28PM 11 Q. Okay. You also performed a couple different searches in
02:28PM 12 DEA systems. Do you remember performing a search in
02:29PM 13 Concorde?

02:29PM 14 A. I performed a lot of searches, yes.

02:29PM 15 Q. So Concorde, can you explain what type of database that
02:29PM 16 is for the jury?

02:29PM 17 A. I -- to the best -- I'm not really familiar with the --
02:29PM 18 Concorde at this point. It's been many years since I thought
02:29PM 19 about that system. You would really have to refresh my
02:29PM 20 memory on it.

02:29PM 21 Q. Are you familiar with the fact that Concorde is a system
02:29PM 22 that exists within the DEA?

02:29PM 23 A. Yes.

02:29PM 24 Q. And you're familiar that it's a computer-based system,
02:29PM 25 correct?

02:29PM 1 A. Yes.

02:29PM 2 Q. And you're familiar with the fact that it's a
02:29PM 3 computer-based system in which agents can perform searches
02:29PM 4 for people who are associated with investigations DEA is
02:29PM 5 conducting?

02:29PM 6 A. Yes.

02:29PM 7 Q. And you looked at Concorde for whether there were any
02:29PM 8 type of data entries for searches for people associated with
02:29PM 9 the Ron Serio investigation, correct?

02:29PM 10 A. I believe so, yes.

02:29PM 11 Q. And you remember looking up a particular person by the
02:29PM 12 name of Michael Sinatra?

02:29PM 13 A. That name sounds familiar, yes.

02:29PM 14 Q. And do you recall doing a search and performing a search
02:30PM 15 to see whether or not Mr. Bongiovanni ever did a search of
02:30PM 16 Mr. Sinatra?

02:30PM 17 A. I believe so yes, sir.

02:30PM 18 Q. And you recall when you performed that search there
02:30PM 19 weren't any types of hits that came back regarding
02:30PM 20 Mr. Bongiovanni?

02:30PM 21 **MR. DICKSON:** Judge, object. Outside the scope, and
02:30PM 22 Michael Sinatra.

02:30PM 23 **THE COURT:** No, overruled.

02:30PM 24 **BY MR. SINGER:**

02:30PM 25 Q. You recall after you did that search that it didn't come

up with Mr. Bongiovanni's search for Michael Sinatra inside the Concorde system, correct?

A. I don't recall the results of that specific search.

MR. SINGER: Ms. Champoux, if we can bring up for the witness only 3595CQ, as in queen, please.

BY MR. SINGER:

Q. So if you can take a look at that submission, if you need us to move it over a little bit to the right, I can assist you with that.

A. Okay.

Q. Does that refresh your recollection?

MR. SINGER: Okay, Ms. Champoux, if you can take that down for us. Thank you very much.

BY MR. SINGER:

Q. Does that refresh your recollection as to whether or not Mr. Bongiovanni conducted any searches for Michael Sinatra?

A. Can I have that one more time? I just want to confirm -- I apologize, there was a lot of information on that last one.

Q. I want to make sure we get it right.

A. Can you go back to the column A.

Q. Back to column A?

A. Yes, please. Okay. Thank you.

MR. SINGER: You can take that down, Ms. Champoux.

BY MR. SINGER:

Q. Did Mr. Bongiovanni conduct any searches for Michael

02:33PM

1 Sinatra?

02:33PM

2 A. Those records don't indicate that.

02:33PM

3 Q. You also took a look at DARTS entries, correct?

02:33PM

4 A. Correct.

02:33PM

5 Q. And you performed the search to determine whether or not

02:33PM

6 Mr. Bongiovanni searched the DARTS database for names of

02:33PM

7 people associated with Ron Serio drug-trafficking

02:33PM

8 organization, correct?

02:33PM

9 A. I believe so, yes.

02:34PM

10 Q. And during those searches, you did not see

02:34PM

11 Mr. Bongiovanni conduct such searches, correct?

02:34PM

12 A. I don't recall the exact results of that search.

02:34PM

13 **MR. SINGER:** Ms. Champoux, if we can bring up

02:34PM

14 Government Exhibit 3595AS for the witness.

02:34PM

15 **THE WITNESS:** Thank you.

02:34PM

16 **MR. SINGER:** And if you can bring that down,

02:34PM

17 Ms. Champoux.

02:34PM

18 **BY MR. SINGER:**

02:34PM

19 Q. Does that refresh your recollection --

02:34PM

20 A. Yes.

02:34PM

21 Q. -- as to whether or not --

02:34PM

22 A. Oh.

02:34PM

23 Q. -- Mr. Bongiovanni performed any such searches?

02:34PM

24 A. Yes, it does.

02:34PM

25 Q. And he didn't perform any such searches for the Ron Serio

02:34PM 1 people, correct?

02:34PM 2 A. No searches were conducted.

02:34PM 3 Q. And how about with regard to Peter Gerace? Again, you

02:34PM 4 did the same type of search for Peter Gerace, correct?

02:34PM 5 A. Correct.

02:34PM 6 Q. And you didn't determine that Mr. Bongiovanni conducted

02:34PM 7 any such searches in the DARTS system regarding Peter Gerace,

02:35PM 8 correct?

02:35PM 9 A. Again, the results, I can't recall. But --

02:35PM 10 Q. Okay. You remember a person by the name of John Ermin?

02:35PM 11 A. I do not.

02:35PM 12 **MR. SINGER:** Ms. Champoux, if we can bring up 3595BQ.

02:35PM 13 Just for the witness.

02:35PM 14 **THE WITNESS:** Thank you.

02:35PM 15 **MR. SINGER:** And you can bring that down.

02:35PM 16 **BY MR. SINGER:**

02:35PM 17 Q. So you remember John Ermin coming up as a potential

02:35PM 18 person who associated with Mr. Gerace?

02:35PM 19 A. Yes.

02:35PM 20 Q. And you remember doing particular searches for whether or

02:35PM 21 not Mr. Bongiovanni had any contact with Mr. Ermin, right?

02:35PM 22 A. Yes.

02:35PM 23 Q. And he did not, right?

02:35PM 24 A. Correct.

02:35PM 25 Q. So, let's move on to your voluntary interview.

02:35PM 1 So after doing this preparation, you conducted the

02:35PM 2 voluntary interview after Mr. Bongiovanni retired, correct?

02:36PM 3 A. Correct.

02:36PM 4 Q. And so that -- he retired on the 1st of February of 2019

02:36PM 5 as you testified?

02:36PM 6 A. Yes.

02:36PM 7 Q. And to get the interview accomplished in March, you

02:36PM 8 called him up on the phone?

02:36PM 9 A. Yes.

02:36PM 10 Q. And at that point in time, he was no longer a DEA

02:36PM 11 employee, correct?

02:36PM 12 A. Correct, he was retired.

02:36PM 13 Q. So the DEA doesn't have any authority over him at that

02:36PM 14 point, right?

02:36PM 15 A. Correct.

02:36PM 16 Q. And so as a result, he could have said I'm sorry,

02:36PM 17 Mr. Carpenter, but I just don't feel like talking to you,

02:36PM 18 right?

02:36PM 19 A. Absolutely.

02:36PM 20 Q. But he didn't say that, right?

02:36PM 21 A. Correct.

02:36PM 22 Q. He agreed to speak with you?

02:36PM 23 A. Correct.

02:36PM 24 Q. And the circumstances of the March 29, 2019 interview,

02:36PM 25 fair to say that they are a little different than the June 6,

02:36PM 1 2019 interview you conducted?

02:36PM 2 A. Yes.

02:36PM 3 Q. So in the interview in March, you invited Mr. Bongiovanni

02:36PM 4 to come down to meet you, correct?

02:36PM 5 A. Correct.

02:36PM 6 Q. And that was conducted in an office environment, correct?

02:36PM 7 A. Yes.

02:36PM 8 Q. You didn't knock down his front door to get him to go to

02:37PM 9 the interview, correct?

02:37PM 10 A. Correct.

02:37PM 11 Q. You didn't use any type of flash bang grenade during the

02:37PM 12 interview, correct?

02:37PM 13 A. Correct.

02:37PM 14 Q. You never used any type of handcuffs as you just

02:37PM 15 testified, correct?

02:37PM 16 A. Correct.

02:37PM 17 Q. You were accompanied by one other agent; is that right?

02:37PM 18 A. Yes.

02:37PM 19 Q. Mr. Bongiovanni was in his clothes at the time, correct?

02:37PM 20 A. Correct.

02:37PM 21 Q. You don't recall him being in his underwear and

02:37PM 22 undershirt, correct?

02:37PM 23 A. He was fully dressed.

02:37PM 24 Q. And he wasn't handcuffed at any point in time, correct?

02:37PM 25 A. Correct.

02:37PM
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MR. DICKSON: Objection, asked and answered.

THE COURT: Overruled. It's the one time thing.

Let's not -- let's not repeat that.

MR. SINGER: Understand.

BY MR. SINGER:

Q. There was no use of a SWAT team to get him to come down to the U.S. Attorney's Office, correct?

A. Correct.

Q. So the atmosphere was much different than the meeting that you had on June 6th of 2019?

A. The circumstances were different, yes.

Q. Now you testified on direct that you did suspect Mr. Bongiovanni of some type of wrongdoing at the time you conducted the March 29, 2019 interview, correct?

A. I said there were allegations, yes.

Q. And since there were allegations, was it your desire to clear things up, right?

A. Yes.

Q. Or to potentially gain incriminating evidence, correct?

A. Correct.

Q. So, you chose the U.S. Attorney's Office as the meeting spot, correct?

A. Correct.

Q. Now, the U.S. Attorney's Office is not like a police station, right?

02:38PM 1 A. How so?

02:38PM 2 Q. Well --

02:38PM 3 A. I mean, it is not a police station.

02:38PM 4 Q. Well, have you interviewed suspects in your

02:38PM 5 investigations where you've done in a police station?

02:38PM 6 A. Yes, I believe so.

02:38PM 7 Q. And police stations are equipped with interview rooms,

02:38PM 8 correct?

02:38PM 9 A. Correct.

02:38PM 10 Q. And those interview rooms are usually equipped with audio

02:38PM 11 or audiovisual and recording equipment, correct?

02:38PM 12 A. Some of them, yes.

02:38PM 13 Q. As a result of that, there are recordings that can be

02:38PM 14 produced, both audio and video, of the interviews in those

02:39PM 15 rooms, correct?

02:39PM 16 A. If it's used.

02:39PM 17 Q. You were federal agents at that point in time, right?

02:39PM 18 A. Yes.

02:39PM 19 Q. But you weren't required to wear a body cam of any type,

02:39PM 20 correct?

02:39PM 21 A. Correct.

02:39PM 22 Q. So as a result, there wasn't going to be something in

02:39PM 23 this interview that was going to be recorded off a body

02:39PM 24 camera device on your person, correct?

02:39PM 25 A. Correct.

02:39PM 1 Q. And you also talked about how you did not obtain
02:39PM 2 recording equipment at the time; is that right?

02:39PM 3 A. Correct, we did not utilize it.

02:39PM 4 Q. But you had the ability to obtain recording equipment if
02:39PM 5 you wanted, correct?

02:39PM 6 A. Correct.

02:39PM 7 Q. So, for instance, you're familiar that federal agents
02:39PM 8 often use something called a KEL recording device?

02:39PM 9 A. I -- they use recording devices, yes.

02:39PM 10 Q. Yeah. And so it's a way that they can record people,
02:39PM 11 even in clandestine situations, correct?

02:39PM 12 A. I believe so, yeah.

02:39PM 13 Q. You never asked anyone to obtain a recording device like
02:39PM 14 that, correct?

02:39PM 15 A. Correct.

02:39PM 16 Q. You didn't obtain any other type of other type of
02:39PM 17 nonclandestine recording device, correct?

02:40PM 18 A. Correct.

02:40PM 19 Q. And you had a cell phone, a government issued cell phone,
02:40PM 20 at that point in time?

02:40PM 21 A. Correct.

02:40PM 22 Q. What type of phone was it, iPhone? Android?

02:40PM 23 A. I believe it was an iPhone.

02:40PM 24 Q. So the iPhone that you had had the ability to record
02:40PM 25 things, correct?

[illegible]

02:41PM 1 Q. Yes.

02:41PM 2 A. A tape cassette recording device I believe.

02:41PM 3 Q. So was that something that was easily obtained by you,
02:41PM 4 correct?

02:41PM 5 A. Yes.

02:41PM 6 Q. But you didn't obtain anything for Mr. Bongiovanni's
02:41PM 7 interview, correct?

02:41PM 8 A. His interview was not recorded.

02:41PM 9 Q. Okay. So during this interview, instead of recording it,
02:41PM 10 on 3/29/2019, you decided to take handwritten notes, right?

02:41PM 11 A. Correct.

02:41PM 12 Q. And so fair to say that the handwritten notes that you
02:41PM 13 took are not a verbatim record of your interview, correct?

02:41PM 14 A. Correct.

02:41PM 15 Q. It's not like a transcript that Miss Ann is typing up
02:41PM 16 right here right now?

02:41PM 17 A. Correct.

02:41PM 18 Q. And, so, the interview notes that you took that day, they
02:41PM 19 contain points that you raised with Mr. Bongiovanni, right?

02:41PM 20 A. Correct.

02:41PM 21 Q. And they also contain a summary of what you recall
02:41PM 22 Mr. Bongiovanni saying, and what you said to him, correct?

02:41PM 23 A. They were taken as he was speaking. So it wouldn't
02:41PM 24 necessarily be someone writing down what he was saying and
02:41PM 25 responding, correct. So it would be not a summary, but an

02:42PM 1 actual -- what he was saying.

02:42PM 2 Q. Okay. So, when he was saying words, you were writing
02:42PM 3 down in your notepad?

02:42PM 4 A. Correct.

02:42PM 5 Q. And when you were asking questions, were you also writing
02:42PM 6 down in your notepad?

02:42PM 7 A. No.

02:42PM 8 Q. So, how were you indicating what you asked
02:42PM 9 Mr. Bongiovanni in your notes?

02:42PM 10 A. They would -- when I was done asking, I would indicate
02:42PM 11 what the topic of conversation was, and then go from there.

02:42PM 12 And then as I was rereading my notes, I would have known
02:42PM 13 what the topic of conversation was. So, yes.

02:42PM 14 Q. All right. So fair to say that what you communicated to
02:42PM 15 Mr. Bongiovanni is not really reflected 100 percent in your
02:42PM 16 notes, correct?

02:42PM 17 A. It is a -- it is as close -- it is a -- the notes are not
02:42PM 18 100 percent recorded of everything that was said.

02:42PM 19 Q. Yeah. So when you decided to shift to a certain topic,
02:42PM 20 you wrote down in your notes the topic that you --

02:43PM 21 A. Correct.

02:43PM 22 Q. -- were you discussing?

02:43PM 23 But you didn't write down the specific questions you
02:43PM 24 asked Mr. Bongiovanni?

02:43PM 25 A. All the questions, correct.

02:43PM 1 Q. Okay. You were just mainly recording what you recall to
02:43PM 2 be his responses to certain questions you were asking?

02:43PM 3 A. Yes.

02:43PM 4 Q. Okay. And with regard to the notes, I know that several
02:43PM 5 agents have a practice of including quotation marks on words
02:43PM 6 that the person they're interviewing specifically said. Do
02:43PM 7 you have the same practice?

02:43PM 8 A. Some of the notes I would put in quotes exactly what he
02:43PM 9 said, so I would know that that was a verbatim what he said.

02:43PM 10 Q. Yeah, I guess that's what I'm getting at.

02:43PM 11 So if your notes reflected quotation marks, that would be
02:43PM 12 something that you recall exactly was said by Mr. Bongiovanni
02:43PM 13 in response to a question you asked?

02:43PM 14 A. Correct.

02:43PM 15 Q. But if the quotation marks were not part of your notes,
02:43PM 16 it's not something that was exactly said, it was more of a
02:43PM 17 summary of what you remember?

02:43PM 18 A. It may have been exactly what he said, but the quotes
02:44PM 19 would have indicated to me that for some reason I thought was
02:44PM 20 important to key in on and to exemplify in my report.

02:44PM 21 Q. So the quotation marks are not always directly what
02:44PM 22 Mr. Bongiovanni said in response to you?

02:44PM 23 A. No, the quotes are. But just because it not in quotes
02:44PM 24 does not mean it is not an accurate -- is not a direct answer
02:44PM 25 that he gave.

02:44PM 1 Q. Okay. So, you also after the interview produced a
02:44PM 2 memorandum of investigation about the interview; is that
02:44PM 3 right?

02:44PM 4 A. Yes.

02:44PM 5 Q. And this is an MOI -- MOI is the shorthand for a
02:44PM 6 memorandum of investigation?

02:44PM 7 A. Yes.

02:44PM 8 Q. So this MOI is something that you do after interviews
02:44PM 9 occur, right?

02:44PM 10 A. Correct.

02:44PM 11 Q. And that's the official paperwork?

02:44PM 12 A. Correct.

02:44PM 13 Q. So that's something that you submit to a supervisor for
02:44PM 14 approval?

02:44PM 15 A. Correct.

02:44PM 16 Q. And the MOI in this case, do you recall it being produced
02:44PM 17 almost 60 days after your March 29, 2019 interview?

02:44PM 18 A. I recall it being approved. I remember there was a delay
02:45PM 19 in the approval of it. But the actual report was written
02:45PM 20 within five days.

02:45PM 21 Q. Within five days?

02:45PM 22 A. Yes.

02:45PM 23 Q. And --

02:45PM 24 A. I recall there was a delay in getting it approved with
02:45PM 25 our supervisors.

02:45PM 1 Q. So you recall signing the document, correct?

02:45PM 2 A. Yes.

02:45PM 3 Q. And you prepared the document, and then you sign it?

02:45PM 4 A. It was -- going back to, you know, the supervisor -- if I
02:45PM 5 recall correctly, the supervisor would approve the report
02:45PM 6 first, and then send it back for signature. I believe -- I
02:45PM 7 believe that's how it occurred at the DOJ. It's been three
02:45PM 8 and a half years since I've submitted a report there.

02:45PM 9 Q. So you do your interview, and you have your written
02:45PM 10 notes, correct?

02:45PM 11 A. Correct.

02:45PM 12 Q. And then you produce an MOI after --

02:45PM 13 A. Correct.

02:45PM 14 Q. -- that, correct?

02:45PM 15 And then the MOI goes to your supervisor for approval?

02:45PM 16 A. Yes.

02:45PM 17 Q. And then your supervisor approves it and sends it back to
02:46PM 18 you without signing it?

02:46PM 19 A. I don't recall the exact process at the Department of
02:46PM 20 Justice, it's been three years since I've done that. But I
02:46PM 21 recall that it would have to be approved by the supervisor.

02:46PM 22 Q. Before it was finalized?

02:46PM 23 A. He was -- his signature was the finalization. And I
02:46PM 24 don't recall if I would sign it first, or after he approved
02:46PM 25 it.

02:47PM

1 Adamo, second?

02:47PM

2 A. He approved it, correct.

02:47PM

3 Q. And then he approves it from there?

02:47PM

4 A. Yes.

02:47PM

5 Q. And those are digital signatures, correct?

02:47PM

6 A. Correct.

02:47PM

7 Q. So I'm assuming you have a card that you insert into your

02:47PM

8 computer that allows you to digitally sign documents?

02:47PM

9 A. Yes.

02:47PM

10 Q. The so dates and times that are reflected on the

02:47PM

11 document, that's something that is input by the computer when

02:47PM

12 you sign it with your card?

02:47PM

13 A. Correct.

02:47PM

14 Q. And so what you're saying is that you recall producing

02:47PM

15 this MOI at some point prior to the date that it's signed,

02:47PM

16 right?

02:47PM

17 A. Correct.

02:47PM

18 Q. And then submitting to your supervisor for approval,

02:47PM

19 correct?

02:47PM

20 A. Correct.

02:47PM

21 Q. And then he took 60 days or so to send it back to you for

02:47PM

22 finalization?

02:47PM

23 A. I recall there was a delay in the process of getting this

02:47PM

24 approved. I don't recall exactly what it was and why it took

02:47PM

25 so long.

02:47PM 1 Q. But you're saying that you recall writing your MOI
02:47PM 2 shortly after the interview?

02:47PM 3 A. Yes.

02:47PM 4 Q. Okay. So, the statements that are made inside the MOI,
02:48PM 5 those are ones that you used to help prepare your testimony
02:48PM 6 today, correct?

02:48PM 7 A. Correct.

02:48PM 8 Q. Because this happened a while ago with the interview back
02:48PM 9 in March 29, 2019?

02:48PM 10 A. Yes.

02:48PM 11 Q. And I think you expressed it's been three and a half
02:48PM 12 years since you worked in the office at the DOJ OIG, correct?

02:48PM 13 A. Correct.

02:48PM 14 Q. So, back then, things were fresher in your mind than they
02:48PM 15 are today?

02:48PM 16 A. Yes.

02:48PM 17 Q. So you relied on the notes that you kept, as well as the
02:48PM 18 MOI to help prepare yourself for your testimony?

02:48PM 19 A. Correct.

02:48PM 20 Q. If there are differences in the MOI versus your notes,
02:48PM 21 you would agree with me that your notes are probably the more
02:48PM 22 accurate source of information, correct?

02:48PM 23 A. The notes, by completing the report within five days of
02:48PM 24 the interview, it allows me to have -- using notes as
02:48PM 25 refreshing my memory as the interview is still fresh in my

02:49PM 1 mind. So just something isn't reflected the notes doesn't
02:49PM 2 mean that it wasn't said. And just because isn't wasn't
02:49PM 3 documented in the notes doesn't mean it wasn't said, so it
02:49PM 4 could be in the report and not in the notes.

02:49PM 5 Q. Okay. But I'll ask you again. You'd agree with me that
02:49PM 6 the notes, since they were taken contemporaneously as you
02:49PM 7 said, are going to be more reflective of what was said in the
02:49PM 8 interview on March 29, 2019, than the MOI you wrote days
02:49PM 9 later?

02:49PM 10 A. Correct.

02:49PM 11 Q. So, you talked a little bit on direct about asking
02:49PM 12 Mr. Bongiovanni questions about his relationship with Peter
02:49PM 13 Gerace, right?

02:49PM 14 A. Correct.

02:49PM 15 Q. And you talked about how it started off with
02:49PM 16 Mr. Bongiovanni explaining to you how they got to know each
02:49PM 17 other, right?

02:49PM 18 A. Correct.

02:49PM 19 Q. Like, he related to you that they knew each other because
02:49PM 20 their families knew each other when they were growing up?

02:49PM 21 A. Correct.

02:49PM 22 Q. And then at some point in their earlier lives, they bar
02:49PM 23 tended together for a period of time in their late 20s?

02:50PM 24 A. Correct.

02:50PM 25 Q. And you recall that after Mr. Bongiovanni joined the DEA,

1 he indicated to you about how they lost contact for some
2 period?

3 **MR. DICKSON:** Objection, hearsay. These are
4 statements by his own client, Judge.

5 **THE COURT:** I think he's -- he's just recounting what
6 he testified to on direct as a foundation for his questions;
7 is that correct, Mr. Singer?

8 **MR. SINGER:** That's correct.

9 **THE COURT:** Yeah. So, overruled. He's simply
10 recounting what his direct testimony was as a foundation for
11 the next question, so -- and I recall him testifying to that,
12 so overruled.

13 Go ahead.

14 **BY MR. SINGER:**

15 Q. So he talked to you about how they lost touch over a
16 period of time when he was with the DEA originally?

17 A. Yes, correct.

18 Q. And about how it wasn't until he moved back to Buffalo
19 that they became reacquainted, correct?

20 A. Correct.

21 Q. And, so, according to your MOI, your MOI -- you recall
22 writing down in the MOI about how Mr. Bongiovanni denied that
23 he and Peter Gerace were close friends?

24 A. Correct.

25 Q. So, close friends, that's not a direct quote from

02:51PM 1 Mr. Bongiovanni, correct?

02:51PM 2 A. I can't recall if he specifically said close friends or

02:51PM 3 not.

02:51PM 4 Q. If your notes didn't reflect "close friends" in quotation

02:51PM 5 marks, you would agree with me that that's not what was said

02:51PM 6 directly by Mr. Bongiovanni, correct?

02:51PM 7 A. No, I would not agree with that.

02:51PM 8 Q. And, so, that's something, I guess, that you used to

02:51PM 9 describe the nature of their relationship, correct?

02:51PM 10 A. When I wrote the reported, the interview was fresh in my

02:51PM 11 mind. So he may have said -- used that word during the

02:51PM 12 interview, and it may not have been reflected in my notes.

02:51PM 13 Q. But you talked earlier about how Mr. Bongiovanni stated

02:51PM 14 to you that Peter Gerace was not in his inner circle of

02:51PM 15 friends; do you remember saying that on direct?

02:51PM 16 A. Yes.

02:51PM 17 Q. And inner circle of friends, that you recall was

02:52PM 18 something that was said by --

02:52PM 19 A. Correct.

02:52PM 20 Q. -- Mr. Bongiovanni, because you remember that was

02:52PM 21 something that was quoted --

02:52PM 22 A. Yes.

02:52PM 23 Q. -- inside of your report, right?

02:52PM 24 A. Yes.

02:52PM 25 Q. So the inner circle of friends was something that

02:52PM 1 Mr. Bongiovanni used in his interview with you, right?

02:52PM 2 A. Yes.

02:52PM 3 Q. And "close friends" is not something he used directly in
02:52PM 4 his interview with you, correct?

02:52PM 5 A. I can't recall him using it or not.

02:52PM 6 Q. Okay. But it's not reflected your notes --

02:52PM 7 A. Correct.

02:52PM 8 Q. -- that they were close friends. But your MOI reflects
02:52PM 9 it?

02:52PM 10 A. Yes.

02:52PM 11 Q. So there's a difference in there; would you agree with me
02:52PM 12 on that?

02:52PM 13 A. Yes.

02:52PM 14 Q. So a definition of close friends. What's your definition
02:52PM 15 of close friends?

02:52PM 16 A. Someone that I'm in contact with regularly. Someone that
02:52PM 17 I celebrate things with. Someone that if I -- if I see out.
02:52PM 18 Someone that I see on vacation and I'm happy to see. Someone
02:52PM 19 I'm in contact with regularly. Someone I invite over to my
02:52PM 20 house.

02:53PM 21 Q. So that's your definition. You understand that another
02:53PM 22 person's definition of what a close friend is or is not may
02:53PM 23 differ from yours, correct?

02:53PM 24 A. Sure.

02:53PM 25 Q. And so, like, one of the things Mr. Bongiovanni talked to

02:53PM 1 you about, about Mr. Gerace not being in his inner circle, as
02:53PM 2 he said, was that he said that, you know, hey, if I see him
02:53PM 3 out and/or socializing, I'll go have a drink with him.

02:53PM 4 **MR. DICKSON:** Objection, hearsay.

02:53PM 5 **THE COURT:** Yes. Well, hang on.

02:53PM 6 No, overruled.

02:53PM 7 **BY MR. SINGER:**

02:53PM 8 Q. So, do you recall Mr. Bongiovanni relating about how if
02:53PM 9 he saw Mr. Gerace out when he was out, he would go have a
02:53PM 10 drink with him?

02:53PM 11 A. That's how he described it, yes.

02:53PM 12 Q. And do you recall about how he talked about the nature of
02:54PM 13 the closeness or inner circle of their friendship about how
02:54PM 14 Mr. Gerace wasn't invited to any of the weddings that he had,
02:54PM 15 correct?

02:54PM 16 A. Correct.

02:54PM 17 Q. And about how he never went over to Mr. Gerace's house,
02:54PM 18 correct?

02:54PM 19 A. Correct.

02:54PM 20 Q. So, I mean, you would agree with me that a person who, as
02:54PM 21 you termed it in your report, close friend, may be someone
02:54PM 22 that someone would invite to their wedding, correct?

02:54PM 23 A. Wedding guests are personal and vary by person to person.

02:54PM 24 Q. I mean, you would agree with me that someone that they
02:54PM 25 socialize with out at bars are someone that they might

02:54PM 1 consider a friend, correct?

02:54PM 2 A. They might.

02:54PM 3 Q. But not always someone that they're 100 percent close
02:54PM 4 with, correct?

02:54PM 5 A. Well, friendship varies.

02:54PM 6 Q. You were asked a couple different questions about
02:54PM 7 meetings between Mr. Gerace and Mr. Bongiovanni on direct; do
02:54PM 8 you remember that?

02:54PM 9 A. Yes.

02:54PM 10 Q. And those related to the text messages, correct?

02:55PM 11 A. Um-hum.

02:55PM 12 Q. So, when you were asking Mr. Bongiovanni questions about
02:55PM 13 what it meant for Peter Gerace to be in Mr. Bongiovanni's
02:55PM 14 inner circle, as the term he used, or close friends as the
02:55PM 15 term you used, did you ask him about every time that he met
02:55PM 16 out Mr. Gerace?

02:55PM 17 A. Not every time, no.

02:55PM 18 Q. Did you ask him about when specifically he met out with
02:55PM 19 Mr. Gerace?

02:55PM 20 A. I asked him about situations, yes.

02:55PM 21 Q. How many situations did you ask him about?

02:55PM 22 A. I don't recall him providing any answers to that, I don't
02:55PM 23 recall.

02:55PM 24 Q. Do you recall about asking him about whether or not he
02:55PM 25 shared his home address with Mr. Gerace?

02:55PM 1 A. I did not ask him about that.

02:55PM 2 Q. Do you recall asking him about whether he attended any
02:55PM 3 sporting events with Mr. Gerace?

02:55PM 4 A. I did not ask him about that.

02:55PM 5 Q. Did you ask him about going to any type of Bills games
02:55PM 6 with Mr. Gerace?

02:55PM 7 A. I did not ask.

02:55PM 8 Q. Did you drill down at all about what it meant to be in or
02:55PM 9 out of an inner circle?

02:55PM 10 A. I did not ask that.

02:55PM 11 Q. So, you've been doing investigations for, by my count,
02:56PM 12 about more than 15 years, correct, Mr. Carpenter?

02:56PM 13 A. At this point. A little less.

02:56PM 14 Q. How many interviews do you think you've done in that time
02:56PM 15 period?

02:56PM 16 A. Since then? Or prior to then?

02:56PM 17 Q. I guess -- I guess, prior to that time, when you sat down
02:56PM 18 with Mr. Bongiovanni in 2019.

02:56PM 19 A. My prior experience in federal law enforcement, I had
02:56PM 20 limited interview experience due to my role in the Secret
02:56PM 21 Service, different missions. I probably conducted about 20
02:56PM 22 or 25 at that point when I was with the Secret Service, and
02:56PM 23 less than that with the Department of Justice.

02:56PM 24 Q. Did you go through any type of specific trainings that
02:56PM 25 talked about the necessity of sometimes asking clarifying

02:56PM 1 questions to answers you're given by suspects?

02:56PM 2 A. Yes.

02:56PM 3 Q. And you'd agree with me that that's good police practice,
02:56PM 4 that's good police work?

02:56PM 5 A. Asking follow-up questions is sometimes beneficial, yes.

02:56PM 6 Q. But you didn't do that in this situation?

02:57PM 7 A. I asked follow-up questions. I tried to keep the
02:57PM 8 conversation as a conversation, not an interview, to allow
02:57PM 9 him the opportunity to explain his relationship the best he
02:57PM 10 wanted to.

02:57PM 11 Q. Okay. And another reason that Mr. Bongiovanni offered as
02:57PM 12 to why Mr. Gerace was not in his, quote, unquote, inner
02:57PM 13 circle, was that he believed that Mr. Gerace was a police
02:57PM 14 groupie; do you remember that?

02:57PM 15 **MR. DICKSON:** Objection, hearsay.

02:57PM 16 **THE COURT:** Yes. That's -- that's not something I
02:57PM 17 think he testified to on.

02:57PM 18 **MR. SINGER:** If we can approach, Judge.

02:57PM 19 **THE COURT:** Yeah, come on up.

02:57PM 20 (Sidebar discussion held on the record.)

02:57PM 21 **THE COURT:** Maybe I'm wrong. So the reason I
02:57PM 22 overruled the objection on hearsay is because the stuff came
02:57PM 23 out on direct examination. I think he's entitled to inquire
02:57PM 24 into it on cross. And that's why. This one, I don't remember
02:57PM 25 coming out on direct, so why isn't this --

02:58PM 1 **MR. SINGER:** So under the Rule of Completeness,
02:58PM 2 Judge, I'm allowed to introduce statements that
02:58PM 3 Mr. Bongiovanni made that help clarify and give proper context
02:58PM 4 to the answers he gave to Mr. Carpenter.

02:58PM 5 The government in many situations during direct
02:58PM 6 intentionally omitted context for these answers. And as a
02:58PM 7 result, of the jury is left with misimpression about what
02:58PM 8 these answers mean.

02:58PM 9 I should be allowed, under the Rule of Completeness,
02:58PM 10 to provide the proper context.

02:58PM 11 **THE COURT:** Yeah, why not.

02:58PM 12 **MR. DICKSON:** The Rule of Completeness does not
02:58PM 13 permit defendants to introduce self-serving hearsay just to
02:58PM 14 provide context. The Rule of Completeness permits the defense
02:58PM 15 to introduce hearsay statements to correct misimpressions
02:58PM 16 about the statement.

02:58PM 17 **THE COURT:** That's exactly what he saying.

02:58PM 18 **MR. DICKSON:** But he hasn't identified what statement
02:58PM 19 there was a misimpression about. I mean, saying that Peter
02:58PM 20 Gerace is a police groupie, that's an entirely different
02:58PM 21 statement than anything else.

02:58PM 22 **THE COURT:** So how is this context necessary for the
02:58PM 23 jury to understand?

02:58PM 24 **MR. SINGER:** He's defining what the nature of his
02:58PM 25 relationship is. And so the government's trying to paint, as

02:59PM 1 you've heard throughout this entire trial, that Mr. Gerace
02:59PM 2 Mr. Bongiovanni are very, very, very close. That's why
02:59PM 3 Mr. Carpenter asked these questions. He testified on direct
02:59PM 4 that was the purpose and that was something that was important
02:59PM 5 to his investigation, quote, unquote.

02:59PM 6 I am providing the context of what Mr. Bongiovanni's
02:59PM 7 answer is.

02:59PM 8 I mean, this is the same discussion we had with
02:59PM 9 regard to Exhibit 99, Judge, where the government wanted to
02:59PM 10 get in the comment which made Mr. Bongiovanni look bad without
02:59PM 11 providing the proper context as to how he made that, and you
02:59PM 12 rightfully overruled their objection, their objection or their
02:59PM 13 wanting to redact that.

02:59PM 14 **THE COURT:** And so your point -- let me make sure I
02:59PM 15 understand what you're saying.

02:59PM 16 Your point is that while Mr. Bongiovanni said to him
02:59PM 17 we're not close friends, and the text messages that
02:59PM 18 Mr. Dickson showed him may suggest that they were in close
02:59PM 19 contact, that the reason that they were in close contact was
02:59PM 20 because he's a cop, and Gerace is a police groupie.

03:00PM 21 **MR. SINGER:** This is one of the reasons why
03:00PM 22 Mr. Bongiovanni did not include him in his inner circle. It
03:00PM 23 goes to explain exactly that, Judge. That's why we're
03:00PM 24 gonna -- it's not a big, you know, part of the testimony, but
03:00PM 25 it's something that provides that context, Judge.

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MR. DICKSON: Judge, I'll stand on my argument. I

03:01PM 1 think it's clear that I -- I don't think that the defense
03:01PM 2 should be able to walk through piece by piece every single
03:01PM 3 statement that's self serving that Mr. Bongiovanni made during
03:01PM 4 this interview, and that's what we've been doing so far during
03:02PM 5 this presentation.

03:02PM 6 **THE COURT:** No, I don't think so. I don't think so.
03:02PM 7 I think it comes in.

03:02PM 8 **MR. DICKSON:** Okay.

03:02PM 9 (End of sidebar discussion.)

03:02PM 10 **THE COURT:** Mr. Singer, is this a good time for our
03:02PM 11 afternoon break?

03:02PM 12 **MR. SINGER:** If we could just finish this one part,
03:02PM 13 Judge, and then we can take a break within a minute or so?

03:02PM 14 **THE COURT:** Go ahead.

03:02PM 15 **BY MR. SINGER:**

03:02PM 16 Q. So, you recall, again, Mr. Carpenter, that
03:02PM 17 Mr. Bongiovanni talked about why Peter Gerace was not in his
03:02PM 18 inner circle. And one of the reasons that he gave you is he
03:02PM 19 believed Mr. Gerace was a police groupie, correct?

03:02PM 20 A. He described Mr. Gerace as a police groupie.

03:02PM 21 Q. And that's something that was consistent with your
03:02PM 22 investigation into Peter Gerace, and his contact with other
03:02PM 23 people in law enforcement, correct?

03:02PM 24 A. Yes.

03:02PM 25 **MR. SINGER:** Ready for a break, Judge.

03:02PM 1 **THE COURT:** Okay. So let's take our afternoon break.
03:03PM 2 Remember my instructions about not talking about the case with
03:03PM 3 anyone, including each other, and not making up your mind.
03:03PM 4 See you back here in about 15 minutes.

03:03PM 5 (Jury excused at 3:03 p.m.)

03:03PM 6 **THE COURT:** Okay. Anything we want to put on the
03:03PM 7 record?

03:03PM 8 **MR. TRIPI:** Just very briefly, Your Honor. So at the
03:03PM 9 bench during one of the last --

03:03PM 10 **THE COURT:** Should we excuse the --

03:03PM 11 **MR. TRIPI:** Oh, yeah, yeah, yeah. I'm sorry.

03:03PM 12 (Witness excused at 3:03 p.m.)

03:03PM 13 **MR. TRIPI:** So up at the bench during one of the last
03:04PM 14 times we were up there when the issue arose regarding drug
03:04PM 15 testing, I had indicated that before Francis DiCarlo tested, I
03:04PM 16 had asked him as the ASAC what the testing related to, and at
03:04PM 17 that time it was his belief the testing was done out of
03:04PM 18 New York City. But we didn't get into that testimony at trial
03:04PM 19 during the direct or anything like that, and so I never
03:04PM 20 followed up after that point honestly.

03:04PM 21 So when it came up, I caused a message to be pushed
03:04PM 22 back, and what I've learned is the testing is not done out of
03:04PM 23 New York City. If someone were to be tested, say, in Buffalo,
03:04PM 24 they would have gotten an alert or an email indicating that
03:04PM 25 they should go and report to be tested somewhere here.

03:04PM 1 But the New York City office as of right now has no
03:04PM 2 record, can't say one way or the other, whether
03:04PM 3 Mr. Bongiovanni was subject to such testing. There may be
03:04PM 4 deeper looks that can be made out of DEA HQ, which candidly I
03:05PM 5 hadn't caused to be done. But I just wanted to complete the
03:05PM 6 record to make sure my representations to Your Honor were
03:05PM 7 accurate.

03:05PM 8 **THE COURT:** No, I appreciate that. And as I said, if
03:05PM 9 you folks want to get into that, you can. If there's proof,
03:05PM 10 you want to call another witness, or on rebuttal, or whatever,
03:05PM 11 you can do that. I'm not precluding you from doing that.

03:05PM 12 But I appreciate you completing the record.

03:05PM 13 **MR. TRIPI:** Understood. Thank you, Your Honor.

03:05PM 14 **THE COURT:** Okay. Anything else from anybody else?

03:05PM 15 **MR. SINGER:** Not from us, Judge.

03:05PM 16 **THE COURT:** Okay, thanks.

03:05PM 17 **THE CLERK:** All rise.

03:05PM 18 (Off the record at 3:05 p.m.)

03:22PM 19 (Back on the record at 3:22 p.m.)

03:22PM 20 (Jury not present.)

03:22PM 21 **THE CLERK:** All rise.

03:22PM 22 **THE COURT:** Please be seated.

03:22PM 23 **THE CLERK:** We are back on the record for than
03:22PM 24 continuation of the jury trial in case number 19-cr-227,
03:22PM 25 United States of America versus Joseph Bongiovanni.

03:22PM 1 All counsel and parties are present.

03:22PM 2 **THE COURT:** How much longer do you have?

03:22PM 3 **MR. SINGER:** My guess is probably about a half hour,
03:22PM 4 Judge.

03:22PM 5 **THE COURT:** Okay. And then next witness is how long?

03:22PM 6 **MR. COOPER:** Judge, I think my direct of Special
03:22PM 7 Agent Burns is probably between 30 and 45 minutes, and that's
03:22PM 8 depending on -- Parker and I discussed some of the testimony,
03:22PM 9 like the contours of it, and I think we'll probably address it
03:22PM 10 with Your Honor briefly before we start it.

03:22PM 11 **THE COURT:** Okay. We're going to spill over until
03:22PM 12 Tuesday, certainly.

03:22PM 13 **MR. TRIPI:** Yeah, it doesn't look like even if we
03:22PM 14 wanted to we'll be done with witness today.

03:22PM 15 **THE COURT:** Right.

03:23PM 16 **MR. TRIPI:** We'll probably have one left.

03:23PM 17 **THE COURT:** Okay. Well, we'll do what we have to do.
03:23PM 18 We still have some room next week, I think, right?

03:23PM 19 **MR. SINGER:** We have a four-day holiday, Judge.

03:23PM 20 **THE COURT:** Yeah, we're not going to tell the jury to
03:23PM 21 come in on Monday now after telling them we're not.

03:23PM 22 **MR. COOPER:** I don't know what the Court's thoughts
03:23PM 23 are on this, or counsel's, I think we would be willing to stay
03:23PM 24 a half hour tonight if that would make the -- if we're there,
03:23PM 25 if we're close.

03:23PM 1 **THE COURT:** Let's see where we are. I don't want to
03:23PM 2 keep them later than necessary unless we're sure we're
03:23PM 3 finished.

03:23PM 4 **MR. COOPER:** Well, I think the last witness would be
03:23PM 5 very quick. And so if we're close to finish with Brian, it
03:23PM 6 might be worth consideration. That's all.

03:23PM 7 **THE COURT:** Okay. We'll think about it.

03:23PM 8 **MR. SINGER:** That's fine, Judge.

03:23PM 9 **THE COURT:** Okay. Anything else before we bring them
03:23PM 10 back, please?

03:23PM 11 **MR. TRIPI:** No, Your Honor.

03:23PM 12 **MR. SINGER:** No, Your Honor.

03:23PM 13 **THE COURT:** Okay. Let's bring them back, please,
03:23PM 14 Pat.

03:24PM 15 (Jury seated at 3:24 p.m.)

03:25PM 16 **THE COURT:** The record will reflect that our jurors,
03:25PM 17 again, are present.

03:25PM 18 We may go a little late tonight, again, depending on
03:25PM 19 where we are and whether we can finish witnesses or not.

03:25PM 20 Just to let you know, again, we'll be down on Monday,
03:25PM 21 so four days when you don't have to listen to me anymore.

03:25PM 22 I remind the witness that he's still under oath.

03:25PM 23 And you may continue, Mr. Singer.

03:25PM 24 **MR. SINGER:** Thank you, Your Honor.

25

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BY MR. SINGER:

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Q. So, Mr. Carpenter, so we left off on the inner circle friends topic, and I want to revert back to something you were asked on direct.

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MR. SINGER: So, Ms. Champoux, would you mind

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bringing up Exhibit 98, please. And that's in evidence on all the screens. And so if we can advance to page 4, Ms. Champoux.

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Ms. Champoux.

9

BY MR. SINGER:

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Q. And you remember this being asked about this text on your direct testimony, Mr. Carpenter?

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A. Yes.

13

Q. And this is a text that Mr. Bongiovanni sent back to Mr. Gerace, correct?

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A. Yes, sir.

16

Q. And if we go to the preceding page, page 3, it's in response to that, hey, brother, we haven't talked in a while, correct?

17

18

text, correct?

19

A. Yes.

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Q. And you remember being asked about it as a response back from Mr. Bongiovanni indicating the nature of their friendship, correct?

21

22

friendship, correct?

23

A. Yes.

24

Q. And so, you know, you've read -- you've read this memorandum, correct?

25

03:26PM 1 A. Yes.

03:26PM 2 Q. And you understand that the response back from

03:26PM 3 Mr. Bongiovanni on that date wasn't necessarily him just

03:26PM 4 speaking his mind, right?

03:26PM 5 A. I don't know what his intention of responding was.

03:26PM 6 Q. Well, let's go take a look at what his intention was.

03:26PM 7 **MR. SINGER:** If we can look at page 2 of the

03:26PM 8 memorandum, Ms. Champoux, please. And if we can zoom in on

03:26PM 9 the second paragraph right there. Thank you.

03:26PM 10 **BY MR. SINGER:**

03:26PM 11 Q. So, again, you talked about how you reviewed this

03:26PM 12 memorandum as part of your investigation in preparation for

03:27PM 13 the interview in March '19, correct?

03:27PM 14 A. Correct.

03:27PM 15 Q. And, so, safe to say that after reviewing the memorandum

03:27PM 16 you understood that what Mr. Bongiovanni responded with on

03:27PM 17 that date what a somewhat contrived response?

03:27PM 18 A. His response speaks for itself.

03:27PM 19 Q. Well, that's what he says here. So you've read the

03:27PM 20 memorandum, right?

03:27PM 21 A. Yes.

03:27PM 22 Q. And you see where it says that as a continued effort to

03:27PM 23 maintain a sense of normal activity, I texted Gerace back.

03:27PM 24 We've been friends for 25 years, bud, all good.

03:27PM 25 A. Yes.

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1 **MR. SINGER:** And you can take that down,
2 Ms. Champoux.
3 **BY MR. SINGER:**
4 Q. And, again, that goes to the purpose of why he was
5 writing this memorandum to DEA, right?
6 A. To explain his relationship, yes.
7 Q. To explain --
8 A. Those memos, those text messages, yes.
9 Q. -- he was trying explain and document the text messages
0 he received from Peter Gerace, correct?
1 A. Correct.
2 Q. And what he responded with, correct?
3 A. Correct.
4 Q. And why he responded in that fashion, correct?
5 A. He explained it.
6 Q. Yeah, because he didn't want to tip off Mr. Gerace that
7 he was under investigation at that time, correct?
8 A. I don't know what he meant by normalcy.
9 Q. Did you review the memorandum?
0 A. Yes. He said that -- he stated that in a sense to
1 maintain normalcy. I don't know what context he meant
2 normalcy. As it relates to their friendship, or what
3 context? But that's what he said.
4 Q. Okay. Another thing that you talked about on direct was
5 you were talking about how Mr. Bongiovanni, you talked to him

03:28PM 1 about Peter Gerace becoming a potential informant; is that
03:28PM 2 right?

03:28PM 3 A. I asked about that, yes.

03:28PM 4 Q. And you asked him -- and the way you phrase it in your
03:28PM 5 testimony is that the question was asked about
03:28PM 6 Mr. Bongiovanni relating to you that Mr. Gerace was being
03:28PM 7 considered as an informant for the DEA; do you remember
03:28PM 8 testifying to that on direct?

03:28PM 9 A. Yes.

03:28PM 10 Q. But that was not, in fact, what Mr. Bongiovanni related
03:28PM 11 to you. Do you recall him talking about how Mr. Gerace was
03:28PM 12 not gonna become a DEA informant but, in fact, he was
03:29PM 13 referred to the FBI to become an informant?

03:29PM 14 A. As I recall it, he was brought into the DEA office to be
03:29PM 15 vetted, and it was decided that he would be referred to the
03:29PM 16 FBI.

03:29PM 17 Q. Correct. So he was never gonna become a DEA informant,
03:29PM 18 right?

03:29PM 19 A. It was decided to refer him to the FBI.

03:29PM 20 Q. Correct. And he was referred to the FBI to become an
03:29PM 21 informant, correct?

03:29PM 22 A. Correct.

03:29PM 23 Q. And your understanding was that Mr. Gerace was never
03:29PM 24 signed up to become a DEA informant based on the records you
03:29PM 25 reviewed, correct?

03:29PM 1 A. Correct.

03:29PM 2 Q. So, another thing that you guys talked about on March 29,
03:29PM 3 2019, was -- was the vacations with Peter Gerace; do you
03:29PM 4 remember that?

03:29PM 5 A. Yes.

03:29PM 6 Q. Do you remember asking about whether they -- they -- they
03:29PM 7 did anything to coordinate trips together?

03:29PM 8 A. Correct.

03:29PM 9 Q. Flights together?

03:29PM 10 A. Yes.

03:29PM 11 Q. And the only thing that really came up was this trip to
03:29PM 12 Las Vegas, correct?

03:29PM 13 A. Correct.

03:29PM 14 Q. And that trip occurred, to your knowledge, back in 2011?

03:30PM 15 A. Sounds about right.

03:30PM 16 Q. That was well before any type of investigation into Peter
03:30PM 17 Gerace existed, correct?

03:30PM 18 A. It was before ours, yes.

03:30PM 19 Q. And so with regard to the Vegas vacation, this trip was
03:30PM 20 not something that was preplanned where Mr. Gerace was going
03:30PM 21 to go with Mr. Bongiovanni, right?

03:30PM 22 **MR. DICKSON:** Objection. Lack of personal knowledge.

03:30PM 23 **THE COURT:** Yeah.

03:30PM 24 **MR. SINGER:** Let me rephrase the question.

03:30PM 25 **THE COURT:** Sustained. Go ahead.

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BY MR. SINGER:

Q. When you asked Mr. Bongiovanni about that trip, he explained to you how he did not coordinate reservations for airlines with Mr. Gerace, correct?

A. Correct.

Q. And he talked to you how he did not plan for Mr. Gerace to be out there, correct?

A. Correct.

Q. He talked to you about how the nature of the trip to Vegas back in 2011 was regarding another travel that he had booked with somebody else?

A. Correct.

Q. And that when Peter Gerace arrived in Vegas, same place, while he saw him, it was not something that was preplanned?

A. He described it as coincidental, yes.

Q. Okay. And there was nothing in your investigation which suggested that there was preplanning going on between the flights of Mr. Gerace and Mr. Bongiovanni, correct?

A. Correct.

Q. So, one of the things that you talked about on direct is that Mr. Bongiovanni, in your interview on March 29th of 2019, denied initiating contact with Peter Gerace; do you remember that?

A. Yes.

Q. And so I don't think we talked about it before,

03:31PM 1 initiating contact. That was not something that was directly
03:31PM 2 quoted in your notes, correct?

03:31PM 3 A. Correct.

03:31PM 4 Q. It wasn't something that was directly quoted in your MOI,
03:31PM 5 correct?

03:31PM 6 A. Correct.

03:31PM 7 Q. So that's not Mr. Bongiovanni's words, correct?

03:31PM 8 A. In -- it would have been in response to a question that I
03:31PM 9 asked him.

03:31PM 10 Q. Okay. So, safe to say that your words are "initiating
03:32PM 11 contact?"

03:32PM 12 A. I would have phrased it, did you ever initiate contact
03:32PM 13 with Peter Gerace?

03:32PM 14 Q. Okay. I know we don't have a recording of exactly what
03:32PM 15 was said, but as far as initiating contact is concerned, do
03:32PM 16 you recall asking any type of clarifying questions as to what
03:32PM 17 you meant by that statement?

03:32PM 18 A. No.

03:32PM 19 Q. So, you didn't ask Mr. Bongiovanni to clarify the
03:32PM 20 time frame about when you were talking about he initiated
03:32PM 21 contact or did not initiate contact with Mr. Gerace?

03:32PM 22 A. Correct.

03:32PM 23 Q. And kind of like we were talking about before, you didn't
03:32PM 24 go through every single time that they spoke since they first
03:32PM 25 met, going all the way back to the old neighborhood with

03:32PM 1 their parents?

03:32PM 2 A. Correct.

03:32PM 3 Q. You didn't speak about every single time they may have

03:32PM 4 met back in the early 2000s?

03:32PM 5 A. Correct.

03:32PM 6 Q. You didn't speak about every single time they may have

03:32PM 7 met after Mr. Bongiovanni moved back to the Buffalo in 2001?

03:33PM 8 A. It wasn't specified, correct.

03:33PM 9 Q. You didn't specify about any time period in the 2010s and

03:33PM 10 moving forward to your investigation, correct?

03:33PM 11 A. Yes, it was not specific.

03:33PM 12 Q. So, you're aware of the fact that since the fall of 2018,

03:33PM 13 Mr. Bongiovanni was instructed by his superiors at DEA not to

03:33PM 14 contact Peter Gerace, because at that point in time Peter

03:33PM 15 Gerace was under an active investigation at the DEA?

03:33PM 16 A. Correct.

03:33PM 17 Q. And you're aware of the fact that that directive is what

03:33PM 18 prompted Mr. Bongiovanni to produce those two memorandums,

03:33PM 19 one on November 1st of 2018, the other one on December 10th

03:33PM 20 of 2018, that we've reviewed, correct?

03:33PM 21 A. Yes.

03:33PM 22 Q. And that you reviewed prior to your investigation,

03:33PM 23 correct?

03:33PM 24 A. Yes.

03:33PM 25 Q. And those memorandums were something that came up in your

25 Q. So, you spoke to Mr. Gerace -- sorry, you spoke to

03:35PM 1 Mr. Bongiovanni about Peter Gerace contacting him when
03:35PM 2 someone may have overdosed at Pharaoh's Gentlemen's Club,
03:35PM 3 correct?

03:35PM 4 A. Yes.

03:35PM 5 Q. And he talked to you about how Mr. Gerace had reached out
03:35PM 6 to him on multiple different occasions concerning employees
03:35PM 7 overdosing at Pharaoh's Gentlemen's Club?

03:35PM 8 A. Correct.

03:35PM 9 Q. And as far as those discussions were concerned,
03:35PM 10 Mr. Bongiovanni didn't talk to you about any type of time
03:35PM 11 where Peter Gerace contacted him when a stripper, an
03:35PM 12 employee, was overdosing, saying, what do I do? Correct?

03:35PM 13 A. That's correct.

03:35PM 14 Q. He stated that Mr. Gerace had contacted him with concerns
03:35PM 15 on a few occasions saying what do I do if someone overdoses
03:35PM 16 at the club?

03:35PM 17 A. Correct.

03:35PM 18 Q. And you recall that Mr. Bongiovanni talked to you about
03:36PM 19 how he advised Mr. Gerace that you should be Narcan
03:36PM 20 certified, correct?

03:36PM 21 A. Correct.

03:36PM 22 Q. And you were aware at the time that Mr. Casullo had
03:36PM 23 accused Mr. Bongiovanni of advising Mr. Gerace to get a
03:36PM 24 person who was -- sorry, who was overdosing, to get them out
03:36PM 25 of the club, correct? You're aware of that?

03:36PM 1 A. I'm sorry, can you --

03:36PM 2 Q. Yeah, that was a bad question. I'm sorry, I got tongue
03:36PM 3 tied.

03:36PM 4 So do you remember when you conducted this interview in
03:36PM 5 March of 2019, that Mr. Casullo had made an allegation that
03:36PM 6 Mr. Bongiovanni advised Mr. Gerace when someone was
03:36PM 7 overdosing to get them out of the club; do you remember that?

03:36PM 8 A. Yes.

03:36PM 9 Q. And that was your purpose of drilling down questions on
03:36PM 10 that topic of conversation, correct?

03:36PM 11 A. Correct.

03:36PM 12 Q. But Mr. Bongiovanni denied ever having a conversation
03:37PM 13 with Mr. Gerace when someone was actively overdosing at the
03:37PM 14 club, correct?

03:37PM 15 A. Correct.

03:37PM 16 Q. And he also denied that what Casullo related to
03:37PM 17 investigators was something that was accurate, correct?

03:37PM 18 **MR. DICKSON:** Objection, hearsay.

03:37PM 19 **THE COURT:** Overruled.

03:37PM 20 **THE WITNESS:** Correct.

03:37PM 21 **BY MR. SINGER:**

03:37PM 22 Q. So, one of the things you also talked about is that
03:37PM 23 Mr. Bongiovanni during your interview denied ever witnessing
03:37PM 24 Peter Gerace consume narcotics, remember that?

03:37PM 25 A. Yes.

03:37PM 1 Q. And that was something you reflected in your MOI,
03:37PM 2 correct?

03:37PM 3 A. Um-hum.

03:37PM 4 Q. But, the entry in your MOI, that's not consistent with
03:37PM 5 what was said at the interview, right?

03:37PM 6 A. I believe that he denied seeing him -- I believe that he
03:38PM 7 denied -- stated he denied seeing him consume narcotics.

03:38PM 8 Q. So you remember that you took notes when you were
03:38PM 9 interviewing Mr. Bongiovanni, correct?

03:38PM 10 A. Yes.

03:38PM 11 Q. And those notes were contemporaneous as we talked before
03:38PM 12 about?

03:38PM 13 A. Yes.

03:38PM 14 **MR. SINGER:** Ms. Champoux, if you can bring up
03:38PM 15 Government Exhibit 3595 Bravo Victor only for the witness.
03:38PM 16 And if you can just advance --

03:38PM 17 **MR. COOPER:** That's up for everybody, I think.

03:38PM 18 **MR. SINGER:** Sorry. Are we all good?

03:38PM 19 **THE CLERK:** Yep.

03:38PM 20 **BY MR. SINGER:**

03:38PM 21 Q. I want to get to advance to page 6 of your notes. So
03:38PM 22 I'll direct your attention, sir, to the first third of that
03:38PM 23 document just above where it mentions Pharaoh's.

03:39PM 24 A. Yes.

03:39PM 25 Q. And if could you review that, and see if that refreshes

1 your recollection about what was discussed.

2 **MR. SINGER:** If you can bring that down,
3 Ms. Champoux?

4 **BY MR. SINGER:**

5 Q. So, you'd agree with me that use of drugs was not
6 something that came up in your conversation with
7 Mr. Bongiovanni, but whether Mr. Bongiovanni saw Mr. Gerace
8 with drugs is what came up in your conversation?

9 A. That's what the notes reflect.

10 Q. And you'd agree with me that asking someone about whether
11 they saw someone with drugs is different than asking someone
12 about whether they saw someone use drugs, correct?

13 A. Correct.

14 Q. Now you talked about on direct how Mr. Bongiovanni
15 related to you about keeping Peter Gerace on a short leash;
16 do you remember that?

17 A. Yes.

18 Q. And that was something that you believe was a direct
19 quote from Mr. Bongiovanni?

20 A. Yes.

21 Q. And that was something -- "short leash" was a term that
22 you used in your MOI, that you wrote --

23 A. Correct.

24 Q. -- after the interview?

25 But would you be surprised that your notes don't reflect

03:40PM 1 that?

03:40PM 2 A. I recall my notes reflect on that topic, yes.

03:40PM 3 Q. You don't recall that your notes actually reflect that it

03:40PM 4 wasn't "short leash" but "leash" that was reflected by

03:40PM 5 Mr. Bongiovanni?

03:40PM 6 A. The notes reflect as I was writing the report, I recall

03:40PM 7 him saying short prior, so the leash part was accurate and

03:41PM 8 reflected in the notes. And as I was typing the report to

03:41PM 9 refresh my memory, I remember him saying that part of it.

03:41PM 10 Q. Yeah. This was the MOI that we're talking about, that

03:41PM 11 was approved almost 60 days later?

03:41PM 12 A. Yes.

03:41PM 13 Q. And so with regard to this comment, kind of like before,

03:41PM 14 did you ask any type of clarifying questions about what time

03:41PM 15 period Mr. Bongiovanni was referring to when he talked about

03:41PM 16 keeping Mr. Gerace on a leash or short leash?

03:41PM 17 A. I do not.

03:41PM 18 **MR. SINGER:** Judge, can we approach quickly?

03:41PM 19 **THE COURT:** Sure.

03:41PM 20 (Sidebar discussion held on the record.)

03:41PM 21 **MR. SINGER:** I just wanted to bring this up to the
03:41PM 22 bench before I asked this line of questioning. So one of the
03:41PM 23 things that came up in direct questions of the witness was
03:42PM 24 that he had the conversation with Mr. Bongiovanni during that
03:42PM 25 interview about what was related regarding the racial

03:42PM 1 comments.

03:42PM 2 And so Mr. Bongiovanni, as testified on direct,
03:42PM 3 indicated that he denied -- denied making that comment to
03:42PM 4 Mr. Casullo.

03:42PM 5 But was not testified on direct was the reasons given
03:42PM 6 as to why he believed that he did not make that statement to
03:42PM 7 Mr. Casullo. And, so I'd like to ask questions to give proper
03:42PM 8 context as to his response about why Mr. Casullo didn't get
03:42PM 9 things right.

03:42PM 10 **THE COURT:** Tell me, what's the story?

03:42PM 11 **MR. SINGER:** So what I believe is that the witness is
03:42PM 12 going to be able to testify about things that Mr. Cas --
03:42PM 13 things that Mr. Bongiovanni related about Mr. Casullo, and why
03:42PM 14 he believed that this was something that was made up, and
03:42PM 15 why -- and he gives context as to why he denied making the
03:42PM 16 statement.

03:42PM 17 So, for instance, he would talk about problems that
03:42PM 18 Mr. Casullo and he had at work. He would talk about different
03:43PM 19 things that would happen with regard to G.S. Yensan. He
03:43PM 20 talked about various concerns about Mr. Casullo not having his
03:43PM 21 back. And so it provides context, like Exhibit 99.

03:43PM 22 **THE COURT:** I think -- so, you know, I disagree with
03:43PM 23 Mr. Dickson on the Rule of Completeness right along because
03:43PM 24 I'm applying fundamentally unfair texts.

03:43PM 25 This one seems to go beyond that. I don't think it's

03:43PM 1 out of context, you're now giving self-serving testimony
03:43PM 2 that's hearsay. And you can prove that in other ways, but I
03:43PM 3 don't think you can include that through this, because I think
03:43PM 4 that is not giving context for what was said or not clarifying
03:43PM 5 what was said.

03:43PM 6 All you're -- you're giving reasons for what was
03:43PM 7 said, not -- not clarifying, okay?

03:43PM 8 **MR. SINGER:** I understand, Judge.

03:43PM 9 **THE COURT:** That's a difference.

03:43PM 10 **MR. SINGER:** I wanted to bring it up.

03:44PM 11 **THE COURT:** No, I appreciate you doing it.

03:44PM 12 So you won one, Mr. Dickson, without opening your
03:44PM 13 mouth.

03:44PM 14 (Sidebar discussion ended.)

03:44PM 15 **MR. SINGER:**

03:44PM 16 Q. And, so, Mr. Carpenter, so another thing that you talked
03:44PM 17 about during direct testimony was that as you remember, back
03:44PM 18 on March 29th of 2019, you did not bring up the name Ron
03:44PM 19 Serio to Mr. Bongiovanni during the interview that you had at
03:44PM 20 the U.S. Attorney's Office, right?

03:44PM 21 A. Correct.

03:44PM 22 Q. But it would be fair to say that you did discuss people
03:44PM 23 associated with the Ron Serio case during the March 29, 2019,
03:44PM 24 interview, correct?

03:44PM 25 A. Correct.

03:44PM 1 Q. So, I know -- you didn't note those discussions inside
03:44PM 2 your MOI; is that right?

03:44PM 3 A. That's correct.

03:44PM 4 Q. But you did note those discussions inside your notes,
03:44PM 5 correct?

03:44PM 6 A. Correct.

03:44PM 7 Q. Was there a reason you left it out of your MOI?

03:44PM 8 A. No, there was not. It was -- it probably should have
03:45PM 9 been included.

03:45PM 10 Q. Yeah, because, I mean, the purpose of the MOI is to
03:45PM 11 document all parts of your interview with Mr. Bongiovanni,
03:45PM 12 correct?

03:45PM 13 A. Correct.

03:45PM 14 Q. And by excluding those details about the interview, it's
03:45PM 15 not a complete and accurate report, correct?

03:45PM 16 A. It leaves out that section of the interview, yes.

03:45PM 17 Q. So, one of the names that you discussed back on March 29,
03:45PM 18 2019, was a person by the name of T.S., correct?

03:45PM 19 A. Yes.

03:45PM 20 Q. And we talked about that name a while back when we first
03:45PM 21 started cross-examination, correct?

03:45PM 22 A. Yes.

03:45PM 23 Q. He was somebody who was associated with the Ron Serio
03:45PM 24 investigation because there were allegations made by Ron
03:45PM 25 Serio that T.S.'s name was provided to him by

03:45PM 1 Mr. Bongiovanni, correct?

03:45PM 2 A. Yes, I believe so.

03:45PM 3 Q. And so that was one of the reasons why you raised that
03:45PM 4 name, correct?

03:45PM 5 A. Yes.

03:45PM 6 Q. You wanted to get some background and understanding about
03:45PM 7 whether Mr. Bongiovanni ever had him as a confidential
03:45PM 8 informant, correct?

03:45PM 9 A. I just want to know what his reaction -- what his
03:46PM 10 response would be to that name.

03:46PM 11 Q. Okay. And his response was, is that he knew that that
03:46PM 12 person was someone associated with someone they were trying
03:46PM 13 to buy drugs from when they had R.K. as a source, correct?

03:46PM 14 A. Yes, I believe so.

03:46PM 15 Q. But other than that, he didn't know who T.S. was?

03:46PM 16 A. I don't recall, I don't believe so.

03:46PM 17 Q. Okay. And another person you had brought up was a person
03:46PM 18 by the name of Charles Newkirk?

03:46PM 19 A. Yes.

03:46PM 20 Q. And those are things -- that was another person that was
03:46PM 21 associated with the Ron Serio investigation, correct?

03:46PM 22 A. I believe so, yes.

03:46PM 23 Q. And so in talking about these names, you don't remember
03:46PM 24 ever mentioning the names Ron Serio?

03:46PM 25 A. No, I did not.

03:46PM 1 Q. Because, I mean, all these people are associated with the
03:46PM 2 Ron Serio investigation; you'd agree with me on that, right?

03:46PM 3 A. Yes.

03:46PM 4 Q. And the purpose of you asking questions about those
03:46PM 5 individuals was to further the investigation into the Ron
03:47PM 6 Serio part of the case, right?

03:47PM 7 A. Correct.

03:47PM 8 Q. But you still don't recall ever mentioning anything of
03:47PM 9 Ron Serio?

03:47PM 10 A. I did not mention the name Ron Serio.

03:47PM 11 Q. I know the name doesn't appear in your MOI, right?

03:47PM 12 A. Correct.

03:47PM 13 Q. It doesn't appear in your notes?

03:47PM 14 A. Correct.

03:47PM 15 Q. Did you ever fail to note it?

03:47PM 16 A. It didn't need to be noted because it wasn't said.

03:47PM 17 Q. But, I mean, there were a couple things we went through
03:47PM 18 today where they may not necessarily be reflected in your
03:47PM 19 report, but sometimes they're reflected in your notes and
03:47PM 20 sometimes they're not, right?

03:47PM 21 A. Correct.

03:47PM 22 Q. So, you'd agree with me that as far as the Ron Serio
03:47PM 23 investigation was concerned, Mr. Bongiovanni has knowledge
03:47PM 24 about who Ron Serio is, right?

03:47PM 25 A. Yes.

03:47PM 1 Q. And he has knowledge about different buys that he wanted
03:47PM 2 to conduct with R.K., correct?

03:47PM 3 A. Correct.

03:47PM 4 Q. And that's what T.S. comes into play with, correct?

03:47PM 5 A. I believe so, yes.

03:47PM 6 Q. And so by asking these questions, you're giving him
03:47PM 7 context into an investigative angle that you and your team
03:47PM 8 are taking, correct?

03:47PM 9 A. I'm asking about -- I'm asking about names. If he wants
03:48PM 10 to make leaps, he can.

03:48PM 11 Q. But you're asking about these names, correct?

03:48PM 12 A. Correct.

03:48PM 13 Q. And these names aren't associated with Peter Gerace in
03:48PM 14 any way, right?

03:48PM 15 A. Yes.

03:48PM 16 Q. So, on June 6th, 2019, you conduct another interview in
03:48PM 17 Mr. Bongiovanni's living room, correct?

03:48PM 18 A. Yes.

03:48PM 19 Q. And at that point in time, the topic of Ron Serio comes
03:48PM 20 up, right?

03:48PM 21 A. Correct.

03:48PM 22 Q. And one of the things that you testified on direct was
03:48PM 23 that you didn't understand why this happened, correct?

03:48PM 24 A. I'm sorry?

03:48PM 25 Q. I said one of the things that you testified to on direct

03:48PM 1 is you didn't understand why Mr. Bongiovanni would say that
03:48PM 2 you referred to Ron Serio during your March 29, 2019
03:48PM 3 interview, when you don't believe you raised that name,
03:48PM 4 correct?

03:48PM 5 A. Correct.

03:48PM 6 Q. But you did raise people associated with the Ron Serio
03:48PM 7 investigation on March 29, 2019 correct?

03:48PM 8 A. Correct.

03:48PM 9 **MR. DICKSON:** Objection, asked and answered.

03:49PM 10 **THE COURT:** No, overruled.

03:49PM 11 **BY MR. SINGER:**

03:49PM 12 Q. So, it's possible Mr. Bongiovanni may have mistaken
03:49PM 13 whether or not you've raised Ron Serio, correct?

03:49PM 14 A. I'm not -- I don't know. I don't know what -- he said I
03:49PM 15 brought it up, and I didn't. I don't know what his was.

03:49PM 16 **MR. SINGER:** Okay. Thank you very much.

03:49PM 17 I have no further questions, Judge.

03:49PM 18 **THE COURT:** Any redirect?

03:49PM 19 **MR. DICKSON:** Yes, Judge, I'll be quick.

03:49PM 20 **THE COURT:** Go ahead.

03:49PM 21
03:49PM 22 **REDIRECT EXAMINATION BY MR. DICKSON:**

03:49PM 23 Q. Mr. Carpenter, I want to start by asking you about
03:49PM 24 Mr. Bongiovanni's DEA issued cell phone.

03:49PM 25 A. Yes.

03:49PM 1 Q. Do you remember Mr. Singer asking you about that? Do you
03:49PM 2 remember Mr. Singer asking you about that?

03:49PM 3 A. Yes.

03:49PM 4 Q. Did the defendant say anything to you about how or what
03:49PM 5 he used his DEA issued cell phone for?

03:49PM 6 A. He stated that his DEA issued cell phone he used both for
03:50PM 7 his professional DEA use as well as personal use.

03:50PM 8 Q. Did you understand through the course of your
03:50PM 9 investigation that the defendant wiped his DEA cell phone?

03:50PM 10 A. Correct.

03:50PM 11 Q. Do you remember Mr. Singer asking you questions about
03:50PM 12 recording the March 29th interview?

03:50PM 13 A. Correct.

03:50PM 14 Q. Is documenting an interview with handwritten notes a
03:50PM 15 normal part of what federal agents do?

03:50PM 16 A. Yes.

03:50PM 17 Q. Is that something you've done a lot throughout your
03:50PM 18 career?

03:50PM 19 A. Yes.

03:50PM 20 Q. Is it normal to not write down the questions that you
03:50PM 21 ask?

03:50PM 22 A. Yes.

03:50PM 23 Q. And when you draft your report from your interview, does
03:50PM 24 your report reflect both a combination of your memory and the
03:50PM 25 notes that you took?

03:50PM 1 A. Yes.

03:50PM 2 Q. Mr. Singer also asked you about a delay in the process of
03:50PM 3 getting your report approved; is that right?

03:50PM 4 A. Correct.

03:50PM 5 Q. You mentioned, I think, that you wrote the MOI within
03:50PM 6 five days of doing the interview; is that right?

03:51PM 7 A. Yes.

03:51PM 8 Q. Why do you remember that you wrote it within five days?

03:51PM 9 A. The DOJ OIG policy is to write reports, and best practice
03:51PM 10 is to write reports, within five days. So that memory and
03:51PM 11 notes are both fresh. So that anything that is missing from
03:51PM 12 the notes is still fresh in your memory.

03:51PM 13 So I wrote the report within five days to follow policy
03:51PM 14 and make sure that it is accurate.

03:51PM 15 Q. Mr. Singer also asked you some questions about the Vegas
03:51PM 16 trip; is that right?

03:51PM 17 A. Yes.

03:51PM 18 Q. Mr. Carpenter, in the course of your investigation, did
03:51PM 19 you personally interview somebody named Tara Ostrowski?

03:51PM 20 A. I don't recall. I'm sorry.

03:51PM 21 Q. Do you remember or believe whether you interviewed
03:51PM 22 somebody named Tara Ostrowski?

03:51PM 23 A. I believe so, but --

03:51PM 24 Q. You personally did?

03:51PM 25 A. I don't believe I ever did, no.

03:51PM 1 Q. Do you know whether later on, other members of the team
03:52PM 2 interviewed somebody named Tara Ostrowski?

03:52PM 3 A. I believe so, yes.

03:52PM 4 Q. Mr. Singer also asked you about those memos; do you
03:52PM 5 remember that?

03:52PM 6 A. Yes.

03:52PM 7 Q. Were you already investigating the defendant and his
03:52PM 8 relationship to Peter Gerace at the time the defendant sent
03:52PM 9 those memos to his leadership?

03:52PM 10 A. Yes.

03:52PM 11 Q. Now Mr. Singer also asked you about whether the name Ron
03:52PM 12 Serio or other names came up in your March 29, 2019 interview
03:52PM 13 of the defendant; is that right?

03:52PM 14 A. Yes.

03:52PM 15 Q. Now as of March 29, 2019, Mr. Carpenter, you hadn't
03:52PM 16 searched the defendant's house; is that right?

03:52PM 17 A. Correct.

03:52PM 18 Q. Had you obtained the Serio file at that time?

03:52PM 19 A. No.

03:52PM 20 Q. Did you know all of the different people who might or
03:52PM 21 might not be associated with Ron Serio?

03:52PM 22 A. No.

03:52PM 23 Q. But do you remember clearly whether you said to the
03:53PM 24 defendant in March 29, 2019, whether you clearly said to the
03:53PM 25 defendant anything about the name Ron Serio?

1 A. I did not mention the name Ron Serio during the March
2 meeting.

3 Q. Mr. Singer also asked you about the -- whether you
4 clarified the time frame when you asked the defendant about
5 initiating contact with Peter Gerace; do you remember those
6 questions?

7 A. Yes.

8 Q. What was the question you asked the defendant when you
9 asked about initiating contact?

10 A. Have you ever initiated contact with Peter Gerace?

11 Q. What did he say?

12 A. He denied it. He denied initiating contact.

13 Q. He denied -- did he deny ever initiating contact?

14 A. That was the question that was asked.

15 **MR. SINGER:** Objection.

16 **THE COURT:** I'm sorry?

17 **MR. SINGER:** Can we approach, Judge?

18 **THE COURT:** Sure.

19 (Sidebar discussion held on the record.)

20 **MR. SINGER:** So Mr. Dickson: Asked what was the
21 question you asked of Mr. Bongiovanni?

22 And the response to that given was: Did you ever
23 initiate contact with Mr. Gerace?

24 Then the next question was: Did you ask him did you
25 ever, you know, initiate contact.

03:54PM 1 That wasn't the response back that he got. I think
03:54PM 2 at this point in time, number 1, you know, the question's
03:54PM 3 asked and answered. And number 2, as far as the response, of
03:54PM 4 ever, like, we have clearly what the question was at this
03:54PM 5 point in time. And whether counsel wants to phrase it
03:54PM 6 differently, it's improper, it's an improper question.

03:54PM 7 **THE COURT:** What was the question?

03:54PM 8 **MR. SINGER:** What was the -- it was an open-ended
03:54PM 9 question --

03:54PM 10 **THE COURT:** So what was the question that you asked
03:54PM 11 about initiating contact?

03:54PM 12 Have you ever initiated contacted with Peter Gerace.

03:54PM 13 What did he say?

03:54PM 14 He denied it. He denied initiating contact.

03:54PM 15 He denied -- did he deny ever initiating contact?

03:55PM 16 So that's asked -- that's asked and answered, right?

03:55PM 17 I mean, you've gotten it in. He said no, he never initiated
03:55PM 18 contact.

03:55PM 19 **MR. DICKSON:** Okay, Judge.

03:55PM 20 (Sidebar discussion ended.)

03:55PM 21 **THE COURT:** Next question. That objection is
03:55PM 22 sustained.

03:55PM 23 **MR. DICKSON:** That's fine, Judge. I'm all done.

03:55PM 24 Thank you, Mr. Carpenter.

03:55PM 25 **THE COURT:** Anything more, Mr. Singer?

03:55PM

1 **MR. SINGER:** No, Your Honor. Thank you.

03:55PM

2 **THE COURT:** You can step down, sir. Thank you.

03:55PM

3 (Witness excused at 3:55 p.m.)

4 (Excerpt concluded at 3:55 p.m.)

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CERTIFICATE OF REPORTER

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In accordance with 28, U.S.C., 753(b), I

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certify that these original notes are a true and correct

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record of proceedings in the United States District Court for

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the Western District of New York on March 21, 2024.

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s/ Ann M. Sawyer

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Ann M. Sawyer, FCRR, RPR, CRR

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Official Court Reporter

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U.S.D.C., W.D.N.Y.

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